

By: Chavez

H.B. No. 929

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the protection of certain unmarked burials and
3 associated human remains or funerary objects and to the creation of
4 certain offenses concerning unmarked burials; providing criminal
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 42, Penal Code, is amended by adding
8 Section 42.13 to read as follows:

9 Sec. 42.13. DISTURBING AN UNMARKED BURIAL. (a) In this
10 section:

11 (1) "Disturb" means to remove, damage, or otherwise
12 alter or deface human remains or funerary objects of an unmarked
13 burial.

14 (2) "Funerary object" means an object buried with a
15 person, including items of personal adornment, stone, bone and
16 shell tools, pottery and stone vessels and pipes, and any casket and
17 casket hardware. The term includes objects that are part of a death
18 rite or ceremony of a culture and are placed with individual human
19 remains.

20 (3) "Human remains" means the physical remains of a
21 human body, including bone, hair, teeth, mummified flesh, and ash.

22 (4) "Unmarked burial" means any human skeletal remains
23 or associated funerary objects or any location where human remains
24 or associated funerary objects are discovered or are reasonably

1 likely to exist on the basis of archeological or historical
2 evidence but to which Subtitle C, Title 8, Health and Safety Code,
3 does not apply.

4 (b) A person commits an offense if the person intentionally
5 or knowingly:

6 (1) disturbs human remains or funerary objects from an
7 unmarked burial; or

8 (2) buys, sells, or barter s human remains or funerary
9 objects.

10 (c) A person commits an offense if the person knows a burial
11 is being disturbed and the person intentionally or knowingly fails
12 to notify either:

13 (1) the sheriff of the county in which the unmarked
14 burial is located; or

15 (2) the state archeologist.

16 (d) An offense under Subsection (b) is a state jail felony
17 unless it is shown on the trial of the offense that the defendant
18 has been previously convicted of an offense under Subsection (b),
19 in which event the offense is a felony of the third degree.

20 (e) An offense under Subsection (c) is a Class B misdemeanor
21 unless it is shown on the trial of the offense that the defendant
22 has been previously convicted of an offense under Subsection (c),
23 in which event the offense is a Class A misdemeanor.

24 (f) It is an affirmative defense to prosecution for an
25 alleged violation of this section that the human remains or
26 funerary objects were recovered under:

27 (1) Chapter 191, Natural Resources Code;

1 (2) the National Historic Preservation Act (16 U.S.C.
2 Section 470 et seq.);

3 (3) 36 C.F.R. Part 800;

4 (4) any other applicable federal or state law, rule,
5 or order, including:

6 (A) Executive Order 11593 (36 Fed. Reg. 8921);

7 (B) the Archaeological Resources Protection Act
8 of 1979 (16 U.S.C. Section 470aa et seq.);

9 (C) Section 192.002, Natural Resources Code; or

10 (D) the Native American Graves Protection and
11 Repatriation Act (25 U.S.C. Section 3001 et seq.); or

12 (5) the lawful authority of the state archeologist.

13 (g) At the termination of a criminal prosecution of a
14 defendant under this section, if the custodial rights of the
15 remains cannot be established to the satisfaction of the presiding
16 judge, the state retains jurisdiction as provided by Chapter 192,
17 Natural Resources Code, over any human remains or funerary objects
18 associated with the offense.

19 SECTION 2. Title 9, Natural Resources Code, is amended by
20 adding Chapter 192 to read as follows:

21 CHAPTER 192. DISCOVERY OF UNMARKED BURIALS

22 Sec. 192.001. DEFINITIONS. In this chapter:

23 (1) "Commission" means the Texas Historical
24 Commission.

25 (2) "Disturb" means to remove, damage, or otherwise
26 alter or deface human remains or funerary objects of an unmarked
27 burial.

1 (3) "Funerary object" means an object buried with a
2 person, including items of personal adornment, stone, bone and
3 shell tools, pottery and stone vessels and pipes, and any casket and
4 casket hardware. The term includes objects that are part of a death
5 rite or ceremony of a culture and are placed with individual human
6 remains.

7 (4) "Human remains" means the physical remains of a
8 human body, including bone, hair, teeth, mummified flesh, and ash.

9 (5) "Medical examiner" means a person appointed under
10 Section 2, Article 49.25, Code of Criminal Procedure.

11 (6) "Native American culture" means a tribe, band,
12 nation, people, or culture that is indigenous to the United States.

13 (7) "Native American remains" means human remains of
14 or relating to Native American culture.

15 (8) "Professional archeologist" means a person:

16 (A) registered in the Register of Professional
17 Archaeologists; or

18 (B) meeting the qualifications for archeology in
19 the Secretary of Interior's Standards and Guidelines for Archeology
20 and Historic Preservation.

21 (9) "State archeologist" means the person employed by
22 the Texas Historical Commission under Section 442.007, Government
23 Code.

24 (10) "Unmarked burial" means any human skeletal
25 remains or associated funerary objects or any location where human
26 remains or associated funerary objects are discovered or are
27 reasonably likely to exist on the basis of archeological or

1 historical evidence but to which Subtitle C, Title 8, Health and
2 Safety Code, does not apply.

3 Sec. 192.002. DISCOVERY OF UNMARKED BURIALS. (a) A person
4 who discovers an unmarked burial in, partially in, or on the ground
5 shall immediately stop any activity that may disturb the burial and
6 shall report the presence and location of the burial to the sheriff
7 of the county in which the burial is located or to the state
8 archeologist. Activity that will not disturb the burial site may
9 continue.

10 (b) The person who discovers an unmarked burial shall
11 immediately take all reasonable steps to secure and maintain its
12 preservation. If it is necessary to move an object before
13 completion of disposition as prescribed by Section 192.005 to
14 permit the continuation of work on a construction project or
15 similar project, the state archeologist or sheriff shall supervise
16 the move and require the move be accomplished in the manner that
17 will least disturb and best preserve the object before construction
18 can recommence.

19 (c) If human remains are discovered and the state
20 archeologist or a professional archeologist determines further
21 human remains are unlikely to be present, the steps to be taken
22 under Subsection (b) extend to soil immediately surrounding the
23 burial and to funerary objects, sacred ceremonial objects, or
24 objects of national or tribal patrimony that are discovered along
25 with the human remains.

26 (d) The sheriff or the state archeologist to whom an
27 unmarked burial is reported under this section shall keep the

1 location of the unmarked burial confidential except as provided by
2 this chapter. The location of the site is confidential, may not be
3 disclosed in any public document, and is not considered to be public
4 information for purposes of Chapter 552, Government Code.

5 Sec. 192.003. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A
6 person commits an offense if the person observes human remains,
7 knows or reasonably should know that the county sheriff or the state
8 archeologist is not aware of the existence of or location of the
9 remains, and fails to report the existence of and location of the
10 remains to the county sheriff or the state archeologist.

11 (b) An offense under this section is a Class A misdemeanor
12 unless it is shown on the trial of the offense that the defendant
13 has been previously convicted of an offense under this section, in
14 which event the offense is a state jail felony.

15 Sec. 192.004. DISTURBANCE OF BURIAL; CRIMINAL PENALTY. (a)
16 A person commits an offense if the person disturbs or permits
17 disturbance of an unmarked human burial with the intent to
18 unlawfully appropriate human remains or funerary objects. A person
19 found in actual or constructive possession of human remains or
20 funerary objects more than 50 feet from the burial is presumed to
21 intend to appropriate the remains or objects unless the possession
22 is pursuant to Section 192.002(b).

23 (b) An offense under this section is a state jail felony
24 unless it is shown on the trial of the offense that the defendant
25 has been previously convicted of an offense under this section, in
26 which event the offense is a felony of the third degree.

27 Sec. 192.005. DISPOSITION OF REMAINS. (a) If there is

1 reason to believe a site may contain human remains, the law
2 enforcement officer or state archeologist shall immediately notify
3 the landowner and the appropriate medical examiner. If the remains
4 reported under this section are associated with or suspected of
5 association with any crime, the medical examiner shall, not later
6 than the fifth business day after the medical examiner is notified
7 under this subsection, inform the landowner and the person whose
8 activities resulted in discovery of the site as to the nature and
9 duration of any additional measures needed to protect the site.

10 (b) If remains reported under this section are not
11 associated with or suspected of association with any crime, the
12 medical examiner shall notify the state archeologist not later than
13 the fifth business day after the medical examiner is notified under
14 Subsection (a). The state archeologist shall inform the landowner
15 and the person whose activities resulted in discovery of the site as
16 to the nature and duration of any additional measures needed to
17 protect the site as soon as reasonably practicable, but not later
18 than the fifth business day after the date the state archeologist
19 receives notice under this subsection.

20 (c) If review by the state archeologist of the human remains
21 or any funerary objects suggests or demonstrates a direct
22 historical relationship of the remains to a Native American
23 culture, the state archeologist shall:

24 (1) notify the appropriate Native American leaders;
25 and

26 (2) consult with the appropriate Native American
27 leaders regarding any proposed treatment or scientific studies and

1 final disposition of the remains.

2 (d) All Native American burial remains and associated
3 funerary objects not claimed for reburial by the applicable Native
4 American culture shall be placed for curation purposes by the state
5 archeologist with an institution or state or local government
6 agency, including an institution of higher learning that receives
7 federal funds.

8 (e) If the burial remains and associated funerary objects
9 are not directly related to a Native American culture, the state
10 archeologist shall determine the racial or ethnic group of the
11 remains. The state archeologist shall contact any descendants
12 associated with the remains. If the descendants cannot be located,
13 the state archeologist shall consult community leaders from the
14 appropriate racial or ethnic group concerning the disposition of
15 the remains. If the remains are not claimed for repatriation by the
16 consulted entity, the state archeologist shall designate an
17 appropriate repository for curation or reinterment of the remains.

18 (f) Unmarked burials and funerary objects discovered by
19 professional archeologists during the performance of their
20 official duties shall be reported to the state archeologist not
21 later than the third business day after the date of the discovery.
22 Not later than the 15th business day after the date the state
23 archeologist is notified under this subsection, the professional
24 archeologist shall report to the state archeologist concerning the
25 cultural and biological characteristics of the burial and shall
26 recommend temporary disposition of the remains for purposes of
27 analysis in accordance with this chapter.

1 Sec. 192.006. EXCAVATION NOT REQUIRED. This chapter does
2 not require excavation of an unmarked human burial unless
3 excavation is necessary to prevent destruction of the remains or
4 associated funerary objects.

5 Sec. 192.007. INVOLVEMENT OF PRIVATE LANDOWNERS. (a) Not
6 later than the third business day after the date the state
7 archeologist is notified that human remains or funerary objects
8 have been disturbed on private land, the state archeologist shall
9 notify the landowner. At the request of the landowner, the state
10 archeologist shall consult with the landowner about the proposed
11 treatment and disposition of the human remains and funerary
12 objects. A landowner receives no additional rights to the human
13 remains or funerary objects solely because the landowner consults
14 with the state archeologist.

15 (b) The location of human remains or funerary objects does
16 not allow public access on the private property controlled by the
17 landowner.

18 Sec. 192.008. AFFIRMATIVE DEFENSES TO PROSECUTION. It is an
19 affirmative defense to prosecution for an alleged violation of
20 Section 192.004 that:

21 (1) the person:

22 (A) is the landowner or the landowner's agent,
23 employee, easement holder, or tenant and the disturbance of the
24 unmarked burial or funerary objects occurred accidentally in the
25 course of legitimate activity; and

26 (B) has no intention of further disturbing or
27 permitting the disturbance of an unmarked burial or funerary

1 objects; or

2 (2) the person was a law enforcement officer, a
3 medical examiner, a professional archeologist, a person working
4 under the lawful authority of the state archeologist, or another
5 official performing a duty imposed by law, and the disturbance of
6 the unmarked burial or funerary objects occurred in the performance
7 of the person's official duty.

8 Sec. 192.009. RULEMAKING AUTHORITY. The Texas Historical
9 Commission by rule shall establish procedures to implement this
10 chapter.

11 SECTION 3. (a) Section 42.13, Penal Code, as added by this
12 Act, and Sections 192.003 and 192.004, Natural Resources Code, as
13 added by this Act, apply only to an offense committed on or after
14 the effective date of this Act. For purposes of this section, an
15 offense is committed before the effective date of this Act if any
16 element of the offense occurs before that date.

17 (b) An offense committed before the effective date of this
18 Act is covered by the law in effect when the offense was committed,
19 and the former law is continued in effect for that purpose.

20 SECTION 4. This Act takes effect September 1, 2003.