



1995 ASSEMBLY BILL 895

February 19, 1996 - Introduced by Representatives VRAKAS, FREESE, KLUSMAN, SCHNEIDERS, HUEBSCH, SERATTI, WARD, LEHMAN, OLSEN, AINSWORTH, OTT, ALBERS, OTTE, GROTHMAN, GOETSCH, HAHN and GRONEMUS, cosponsored by Senators WEEDEN, HUELSMAN, PANZER and DARLING. Referred to Committee on Small Business and Economic Development.

1 **AN ACT** *to renumber* 69.18 (4); *to amend* 157.70 (2r); and *to create* 69.18 (4)
2 (bm) and 157.112 of the statutes; **relating to:** the reburial by a cemetery
3 authority of human remains buried in a cemetery owned or operated by the
4 cemetery authority.

Analysis by the Legislative Reference Bureau

Under current law, buried human remains may not be disinterred unless a coroner or medical examiner issues an authorization for disinterment and reinterment. A coroner or medical examiner may issue such an authorization only upon receiving a court order or a written application for disinterment and reinterment signed by the person in charge of the disinterment and by the decedent's spouse, other specified members of the decedent's family or the decedent's guardian.

In addition, under current law the director of the state historical society must identify and catalogue burial sites in the state and must create a register of persons interested in a burial site, such as persons with direct kinship or a cultural, tribal or religious affiliation with the persons buried in the burial ground, persons with scientific, environmental or educational interest in the burial site, or persons with a land use or other commercial interest in the burial site. No burial site, whether catalogued or uncatalogued, may be disturbed without permission from the burial sites preservation board (board) and notice to anyone listed on the register of persons interested in the burial site. Permission from the board to disturb a burial site is not required if: 1) the site is being disturbed under an authorization for disinterment and reinterment issued by a coroner or medical examiner; or 2) the site is being disturbed by a coroner or medical examiner in conjunction with a criminal investigation.

This bill permits a cemetery authority to disinter human remains that are buried in a cemetery owned or operated by the cemetery authority and reinter the human remains in another location within the same cemetery from which the human

remains were disinterred in order to correct any error made by the cemetery authority in the burial of those human remains. A cemetery authority may disinter and reinter human remains under the bill without first seeking authorization for disinterment and reinterment issued by a coroner or medical examiner and without first seeking permission from the board. However, the bill does require a cemetery authority that disinters and reinters human remains under the bill to notify the following persons of the disinterment and reinterment: 1) the coroner or medical examiner of the county in which the disinterment and reinterment occurs; and 2) the spouse of the decedent whose remains are disinterred and reinterred or, if the spouse is not available, other specified family members of the decedent. The bill also provides a cemetery authority with immunity from any civil suit brought against the cemetery authority based on the error that is corrected by a reburial under the bill, unless the error was the result of reckless, wanton or intentional misconduct.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 69.18 (4) of the statutes is renumbered 69.18 (4) (a).

2 **SECTION 2.** 69.18 (4) (bm) of the statutes is created to read:

3 69.18 (4) (bm) A cemetery authority may disinter and reinter buried human
4 remains as provided under s. 157.112 without first obtaining an authorization under
5 par. (a).

6 **SECTION 3.** 157.112 of the statutes is created to read:

7 **157.112 Reburial of human remains by a cemetery authority. (1)** In this
8 section, “rebury” means to disentomb, disinurn or disinter human remains that are
9 buried in a cemetery and reentomb, reinurn or reinter the human remains in another
10 grave, mausoleum space or other place used or intended to be used for the burial of
11 human remains that is located in the same cemetery.

12 **(2)** A cemetery authority may rebury human remains that are buried in a
13 cemetery owned or operated by the cemetery authority for the purpose of correcting
14 any error made by the cemetery authority in the burial of those human remains.

1 **(3)** A cemetery authority may rebury human remains under sub. (2) without
2 first obtaining an authorization under s. 69.18 (4), but the cemetery authority shall
3 do all of the following:

4 (a) No later than 60 days after reburying human remains under sub. (2),
5 provide written notice of the reburial to the coroner or medical examiner of the
6 county in which the reburial occurs.

7 (b) Notify one of the following by registered mail of the reburial:

8 1. The decedent's spouse.

9 2. If the person specified in subd. 1. is not available, an adult son or daughter
10 of the decedent.

11 3. If the persons specified in subds. 1. and 2. are not available, either parent
12 of the decedent.

13 4. If the persons specified in subds. 1., 2. and 3. are not available, an adult
14 brother or sister of the decedent.

15 **(3m)** If none of the persons specified in sub. (3) (b) 1. to 4. are available for
16 notification under sub. (3) (b), the cemetery authority shall maintain a record of its
17 attempt to provide notification under sub. (3) (b) for not less than 10 years from the
18 date of the reburial of the human remains under sub. (2).

19 **(4)** (a) A cemetery authority is immune from civil liability for any error that is
20 corrected by a reburial of human remains under sub. (2).

21 (b) The immunity under par. (a) does not apply if the error was the result of
22 reckless, wanton or intentional misconduct.

23 **SECTION 4.** 157.70 (2r) of the statutes is amended to read:

24 157.70 **(2r)** SITE DISTURBANCE PROHIBITED. Except as provided under subs. (4)
25 and (5) and s. ss. 157.111 and 157.112, no person may intentionally cause or permit

1 the disturbance of a burial site or cataloged land contiguous to a cataloged burial site.
2 This subsection does not prohibit normal agricultural or silvicultural practices
3 which do not disturb the human remains in a burial site or the surface characteristics
4 of a burial site.

5 **SECTION 5. Initial applicability.**

6 (1) This act first applies to reburials of human remains under section 157.112
7 (2) of the statutes, as created by this act, that occur on the effective date of this act,
8 regardless of the date of the original burial of the human remains.

9 (END)