

Part 4

Native American Grave Protection and Repatriation Act

9-9-401 Short title.

This part is known as the "Native American Grave Protection and Repatriation Act."

Enacted by Chapter 286, 1992 General Session

9-9-402 Definitions.

As used in this part:

- (1) "Antiquities Section" means the Antiquities Section of the Division of State History.
- (2) "Burial site" means a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture individual human remains are deposited.
- (3) "Cultural affiliation" means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group.
- (4) "Director" means the director of the Division of Indian Affairs.
- (5) "Division" means the Division of Indian Affairs.
- (6) "Indian tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (7) "Lineal descendant" means the genealogical descendant established by oral or written record.
- (8) "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.
- (9) "Native American remains" means remains that are Native American.
- (10)
 - (a) "Nonfederal land" means land in the state that is not owned, controlled, or held in trust by the federal government.
 - (b) "Nonfederal land" includes:
 - (i) land owned or controlled by:
 - (A) the state;
 - (B) a county, city, or town;
 - (C) an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members; or
 - (D) a person other than the federal government; or
 - (ii) school and institutional trust lands as defined in Section 53C-1-103.
- (11) "Partner agency" means an agency of the state or a tribal agency that participates in the remains repatriation process.
- (12) "Remains" means all or part of a physical individual and objects on or attached to the physical individual that are placed there as part of the death rite or ceremony of a culture.
- (13) "Review committee" means the Native American Remains Review Committee created by Section 9-9-405.
- (14)
 - (a) "State land" means land owned by the state including the state's:
 - (i) legislative and judicial branches;
 - (ii) departments, divisions, agencies, boards, commissions, councils, and committees; and

- (iii) institutions of higher education as defined under Section 53B-3-102.
- (b) "State land" does not include:
 - (i) land owned by a political subdivision of the state;
 - (ii) land owned by a school district;
 - (iii) private land; or
 - (iv) school and institutional trust lands as defined in Section 53C-1-103.
- (15) "Tribal consultation" means the state and the tribes exchanging views and information, in writing or in person, regarding implementing proposed state action under this part that has or may have substantial implications for tribes including impacts on:
 - (a) tribal cultural practices;
 - (b) tribal lands;
 - (c) tribal resources;
 - (d) access to traditional areas of tribal cultural or religious importance; or
 - (e) the consideration of the state's responsibilities to Indian tribes.

Amended by Chapter 79, 2019 General Session

9-9-403 Ownership and disposition of Native American remains.

- (1) If Native American remains are discovered on nonfederal lands on or after April 30, 2007, the ownership or control of the Native American remains shall be determined in the following priority:
 - (a) first, in the lineal descendants of the Native American;
 - (b) second, if the lineal descendants cannot be ascertained, in the Indian tribe that:
 - (i) has the closest cultural affiliation with the Native American remains; and
 - (ii) states a claim for the Native American remains; or
 - (c) third:
 - (i) in the Indian tribe that is recognized as aboriginally occupying the area in which the Native American remains are discovered, if:
 - (A) cultural affiliation of the Native American remains cannot be reasonably ascertained;
 - (B) the land is recognized either by a final judgment of the Indian Claims Commission or through other evidence as the exclusive or joint aboriginal land of some Indian tribe; and
 - (C) that tribe states a claim for the Native American remains; or
 - (ii) in a different tribe if:
 - (A) it can be shown by a preponderance of the evidence that that different tribe has a stronger genetic or cultural relationship with the Native American remains; and
 - (B) that different tribe states a claim for the Native American remains.
- (2) Subject to Subsection (7), Native American remains discovered on nonfederal lands that are not claimed under Subsection (1) shall be disposed of in accordance with rules made by the division:
 - (a) consistent with Chapter 8, Part 3, Antiquities; and
 - (b) in consultation with Native American groups, representatives of repositories, and the review committee established under Section 9-9-405.
- (3) The intentional removal or excavation of Native American remains from state lands may be permitted only if:
 - (a) the Native American remains are excavated or removed pursuant to a permit issued under Section 9-8-305;
 - (b) the Native American remains are excavated or removed after consultation with and written consent of the owner of the state land; and

- (c) the ownership or right of control of the disposition of the Native American remains is determined as provided in Subsections (1) and (2).
- (4)
 - (a) A person who knows or has reason to know that the person has discovered Native American remains on state lands after March 17, 1992 shall notify, in writing, the appropriate state agency having primary management authority over the lands as provided in Chapter 8, Part 3, Antiquities.
 - (b) If the discovery occurs in connection with construction, mining, logging, agriculture, or a related activity, the person shall:
 - (i) cease the activity in the area of the discovery;
 - (ii) make a reasonable effort to protect the Native American remains discovered before resuming the activity; and
 - (iii) provide notice of discovery to the appropriate state agency under Subsection (4)(a).
 - (c) Following notification under Subsections (4)(a) and (b) and upon certification by the head of the appropriate state agency that notification is received, the activity may resume after compliance with Section 76-9-704.
- (5)
 - (a) Scientific study of Native American remains may be carried out only with approval of the owner of the Native American remains as established in Subsections (1) and (2).
 - (b)
 - (i) If ownership is unknown, study before identifying ownership is restricted to those sufficient to identify ownership.
 - (ii) Study to identify ownership shall be approved only in accordance with rules made by the division in consultation with the review committee.
 - (c) The Native American remains may not be retained longer than 90 days after the date of establishing ownership.
- (6)
 - (a) Ownership of Native American remains shall be determined in accordance with this Subsection (6) if:
 - (i) there are multiple claims of ownership under Subsection (1) of Native American remains; and
 - (ii) the division cannot clearly determine which claimant is the most appropriate claimant.
 - (b) If the conditions of Subsection (6)(a) are met, the appropriate state agency having primary authority over the lands as provided in Chapter 8, Part 3, Antiquities, may retain the remains until:
 - (i) the multiple claimants for the Native American remains enter into an agreement concerning the disposition of the Native American remains;
 - (ii) the dispute is resolved through an administrative process:
 - (A) established by rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (B) that is exempt from Title 63G, Chapter 4, Administrative Procedures Act; or
 - (iii) after the administrative process described in Subsection (6)(b)(ii) is complete, the dispute is resolved by a court of competent jurisdiction.
- (7) The division may not make rules that impose any requirement on a person who discovers Native American remains or owns or controls nonfederal land that is not state land on which Native American remains are discovered that is not expressly provided for in Section 9-8-309.
- (8) For purposes of this part, if Native American remains are discovered on nonfederal land that is not state land, the Antiquities Section is considered the state agency having primary authority over the nonfederal land.

- (9) This part does not modify any property rights of a person that owns or controls nonfederal land except as to the ownership of Native American remains.

Amended by Chapter 114, 2008 General Session

9-9-404 Illegal trafficking.

- (1) Any person who knowingly sells, purchases, uses for profit, or transports for sale or profit the remains of a Native American without the right of possession to those remains as provided in this part is guilty of a class A misdemeanor. In the case of a second or subsequent violation the person is guilty of a third degree felony.
- (2) Any person who knowingly sells, purchases, exchanges, receives, uses for profit, or transports for sale or profit any Native American remains obtained in violation of this part is guilty of a class A misdemeanor. In the case of a second or subsequent violation the person is guilty of a third degree felony.

Enacted by Chapter 286, 1992 General Session

9-9-405 Review committee.

- (1) There is created a Native American Remains Review Committee.
- (2)
- (a) The review committee shall be composed of seven members as follows:
- (i) four Tribal members shall be appointed by the director from nominations submitted by the elected officials of Indian Tribal Nations described in Subsection 9-9-104.5(2)(b); and
- (ii) three shall be appointed by the director from nominations submitted by representatives of Utah's repositories.
- (b) A member appointed under Subsection (2)(a)(i) shall have familiarity and experience with this part.
- (c)
- (i) A member appointed under Subsection (2)(a)(i) serves at the will of the director, and if the member represents an Indian Tribal Nation, at the will of that Indian Tribal Nation. Removal of a member who represents an Indian Tribal Nation requires the joint decision of the director and the Indian Tribal Nation.
- (ii) A member appointed under Subsection (2)(a)(ii) serves at the will of the director, and if the member represents a repository, at the will of the Division of State History. Removal of a member who represents a repository requires the joint decision of the director and the Division of State History.
- (d) When a vacancy occurs in the membership for any reason, the director shall appoint a replacement in the same manner as the original appointment under Subsection (2)(a).
- (e) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (i) Section 63A-3-106;
- (ii) Section 63A-3-107; and
- (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (f) The review committee shall designate one of its members as chair.
- (3) The review committee shall:
- (a) monitor the identification process conducted under Section 9-9-403 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;

- (b) review a finding relating to the following, subject to the rules made by the division under Subsection 9-9-403(6):
 - (i) the identity or cultural affiliation of Native American remains; or
 - (ii) the return of Native American remains;
 - (c) facilitate the resolution of a dispute among Indian Tribal Nations or lineal descendants and state agencies relating to the return of Native American remains, including convening the parties to the dispute if considered desirable;
 - (d) consult with Indian Tribal Nations on matters within the scope of the work of the review committee affecting these Indian Tribal Nations;
 - (e) consult with the division in the development of rules to carry out this part;
 - (f) perform other related functions as the division may assign to the review committee; and
 - (g) make recommendations, if appropriate, regarding care of Native American remains that are to be repatriated.
- (4) A record or finding made by the review committee relating to the identity of or cultural affiliation of Native American remains and the return of Native American remains may be admissible in any action brought under this part.
- (5) The appropriate state agency having primary authority over the lands as provided in Chapter 8, Part 3, Antiquities, shall ensure that the review committee has reasonable access to:
- (a) Native American remains under review; and
 - (b) associated scientific and historical documents.
- (6) The division shall provide reasonable administrative and staff support necessary for the deliberations of the review committee.
- (7) The department shall include in the annual written report described in Section 9-1-208:
- (a) a description of the progress made, and any barriers encountered, by the review committee in implementing this section during the previous year; and
 - (b) a review of the expenditures made from the Native American Repatriation Restricted Account.

Amended by Chapter 79, 2019 General Session

9-9-406 Savings provision.

Nothing in this part may be construed to:

- (1) limit the authority of a state agency to:
 - (a) return or repatriate Native American remains to Indian tribes or individuals; or
 - (b) enter into another agreement with the consent of the lineal descendant or culturally affiliated tribe as to the disposition or control over Native American remains;
- (2) delay actions on repatriation requests that are pending on March 17, 1992;
- (3) deny or otherwise affect access to any court, except as provided in Subsection 9-9-403(6);
- (4) limit any procedural or substantive rights that may otherwise be secured to individuals or Indian tribes; or
- (5) limit the application of any state or federal law pertaining to theft or stolen property.

Amended by Chapter 114, 2008 General Session

9-9-407 Native American Repatriation Restricted Account.

- (1) There is created a restricted account within the General Fund known as the "Native American Repatriation Restricted Account."
- (2)

- (a) The Native American Repatriation Restricted Account shall consist of appropriations from the Legislature.
- (b) All interest earned on Native American Repatriation Restricted Account money shall be deposited into the Native American Repatriation Restricted Account.
- (3) Subject to appropriation from the Legislature, the division may use the money in the Native American Repatriation Restricted Account as follows:
 - (a) for a grant issued in accordance with Subsection (6) to an Indian Tribe to pay the following costs of reburial of Native American remains:
 - (i) use of equipment;
 - (ii) labor for use of the equipment;
 - (iii) reseeding and vegetation efforts;
 - (iv) compliance with Section 9-8-404; and
 - (v) caskets;
 - (b) for tribal consultation, including:
 - (i) consultation time, drafting reports, taking detailed notes, communicating to the stakeholders, facilitating discussions, and traveling to individual tribal locations;
 - (ii) travel costs, including per diem and lodging costs, for:
 - (A) Utah tribal leaders and tribal cultural resource managers; and
 - (B) regional partner tribes;
 - (iii) meeting facilities for the division to host tribal consultations when the division determines that a state facility does not meet tribal consultation needs; and
 - (iv) costs for holding meetings under Subsection (3)(b)(iii); and
 - (c) for training tribal representatives, councils, and staff of a partner agency with repatriation responsibilities in the processes under Section 9-8-404 and rules made by the Division of State History in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including costs for:
 - (i) lodging and transportation of employees of the department or a partner agency; or
 - (ii) travel grants issued in accordance with Subsection (6) for tribal representatives.
- (4) If the balance in the Native American Repatriation Restricted Account exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.
- (5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.
- (6) To issue a grant under this section, the division shall:
 - (a) require that an Indian Tribe request the grant in writing and specify how the grant money will be expended; and
 - (b) enter into an agreement with the Indian Tribe to ensure that the grant money is expended in accordance with Subsection (3).

Amended by Chapter 79, 2019 General Session

9-9-408 Burial of ancient Native American remains in state parks.

- (1) As used in this section:
 - (a) "Ancient Native American remains" means ancient human remains, as defined in Section 9-8-302, that are Native American remains, as defined in Section 9-9-402.
 - (b) "Antiquities Section" means the Antiquities Section of the Division of State History created in Section 9-8-304.
- (2)
 - (a) The division, the Antiquities Section, and the Division of State Parks shall cooperate in a study of the feasibility of burying ancient Native American remains in state parks.

- (b) The study shall include:
 - (i) the process and criteria for determining which state parks would have land sufficient and appropriate to reserve a portion of the land for the burial of ancient Native American remains;
 - (ii) the process for burying the ancient Native American remains on the lands within state parks, including the responsibilities of state agencies and the assurance of cultural sensitivity;
 - (iii) how to keep a record of the locations in which specific ancient Native American remains are buried;
 - (iv) how to account for the costs of:
 - (A) burying the ancient Native American remains on lands found within state parks; and
 - (B) securing and maintaining burial sites in state parks; and
 - (v) any issues related to burying ancient Native American remains in state parks.

Amended by Chapter 280, 2021 General Session