

LAWS REGARDING THE TENNESSEE DIVISION OF ARCHAEOLOGY AND ARCHAEOLOGY IN TENNESSEE

2016 Tennessee Code Annotated

Title 11 - Natural Areas and Recreation Chapter 6 - Archaeology

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11-6-101- Division established- Purposes.

- (a)** A division of archaeology is hereby established in the department of environment and conservation, to be headed by a person who will be designated as the state archaeologist.
- (b)** The division is hereby authorized to initiate, operate and maintain a statewide program in archaeology which shall include, but not be limited to:
 - (1)** Surveying the state for mapping, recording and identification of archaeological sites;
 - (2)** Excavation of historic, underwater, prehistoric and paleontological sites, ruins, and mounds for the purpose of securing data and objects relating to man in Tennessee, and the preservation of such sites and materials secured;
 - (3)** Fundamental research in Tennessee archaeology and encouragement of public cooperation and responsibility for the preservation of Tennessee antiquities and archaeological and paleontological sites;
 - (4)** Research in and study of anthropology and related physical and natural sciences, both prior to excavation and thereafter, in order to plan and aid in discovery of sites and artifacts, and provide for the proper assessment once discovered;
 - (5)** Publication, in accordance with the rules, regulations, policies and procedures of the state publications committee, of findings in terms of scientific, popular, and cultural values;
 - (6)** Display and custodianship of artifacts, sites, and other tangible results of the program; and
 - (7)** Educational activities providing for the dissemination of information on archaeological conservation and the encouragement of archaeological societies, parks and museums.
- (c)** It is not the purpose of the division to preempt, replace, or otherwise interfere with archaeological research programs conducted by state institutions of higher learning, but, to the contrary, to stimulate and supplement such programs whenever possible.

[Acts 1970, ch. 468, § 2; T.C.A., § 11-1501; Acts 1990, ch. 1024, § 13; 1995, ch. 218, § 1.]

11-6-102- Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Artifacts" means all relics, specimens or objects of an historical, prehistorical, archaeological or anthropological nature which may be found above or below the surface of the earth, and which have scientific or historic value as objects of antiquity, as aboriginal relics, or as archaeological specimens;
- (2) "Burial grounds" means a place used for or to be used for human burials. "Burial grounds" does not include an individual urn or other container for ashes of a person who has been lawfully cremated. The fact that any tract of land has been set apart for burial purposes, or that a part or all of the grounds have been used for burial purposes, shall be evidence that such grounds were set aside for burial purposes. The fact that graves are not visible on any part of the grounds shall not be construed as evidence that such grounds were not set aside and used for burial purposes;
- (3) "Burial object" means any cultural material, including, but not limited to, whole or broken ceramic, metal or glass vessels, chipped stone tools, groundstone tools, worked bone and shell objects, clothing, medals, buttons, rings, jewelry, firearms, edged weapons, and the casket and parts thereof, that were demonstratively buried with an individual or the burial pit or mound associated with an individual or the structure created to house the body;
- (4) "Diving" means any underwater activity using snorkel, scuba, submersible or surface air supply;
- (5) "Excavation" means digging below the surface of the earth or water by hand or with mechanical equipment for the purpose of recovering artifacts, archaeological data, human remains or burial objects;
- (6) "Field archaeology" means the study of the traces of human culture at any land or water site by means of photographing, mapping, surveying, digging, sampling, excavating and removing artifacts or other archaeological material, or going on a site with that intent;
- (7) "Human remains" means the bodies of deceased persons, in whatever stage of decomposition, including, but not limited to, skeletal remains, mummies, or body parts. "Human remains" does not include the ashes of a person who has been lawfully cremated. "Human remains" does not include body parts or tissue which is removed for transplantation or other medical procedures or research;
- (8) "Site" means any location of historic or prehistoric human activity such as, but not restricted to, mounds, forts, earthworks, burial grounds, structures, villages, mines, caves, shipwrecks, and all locations which are or may be sources of paleontological remains;
- (9) "Submerged" means beneath or substantially beneath the territorial waters of the state;
- (10) "Surface collecting" means walking fields, stream banks, or other locations to look for and collect artifacts lying on the surface of the ground, or which are partially exposed on the

surface of the ground, or which have been disturbed by plowing or natural processes of erosion; and

- (11)** "Territorial waters" means the navigable waters of the state, and such other waters of the state as may be included within "lands beneath navigable waters" as defined in the federal Abandoned Shipwreck Act of 1987.

[Acts 1970, ch. 468, § 2; 1973, ch. 77, § 1; T.C.A., § 11-1502; Acts 1990, ch. 852, § 1; 1995, ch. 218, § 2.]

11-6-103- Archaeological advisory council.

- (a)** An eleven-member archaeological advisory council to the commissioner of environment and conservation and the state archaeologist is hereby created.
- (b)** **(1)** Members of the archaeological advisory council shall serve staggered terms, and to such end the governor shall by June 30, 1983, appoint one (1) member to serve a term of four (4) years.
- (2)** The governor shall by June 30, 1986, appoint:
- (A)** One (1) member to serve a term of two (2) years;
- (B)** One (1) member to serve a term of three (3) years;
- (C)** One (1) member to serve a term of four (4) years;
- (D)** Two (2) members to serve terms of five (5) years;
- (E)** Three (3) members to serve terms of three (3), four (4), and five (5) years, respectively, to be appointed by June 30, 1990; and
- (F)** The initial appointment for the anthropologist representing Middle Tennessee State University shall be for two (2) years, to be appointed by June 30, 1995.
- (3)** Thereafter, each newly-appointed member shall be appointed to serve a term of five (5) years and may be subject to re-appointment.
- (c)** The council shall be composed of:
- (1)** Five (5) anthropologists representing the University of Tennessee, University of Memphis, Vanderbilt University, Middle Tennessee State University, and East Tennessee State University, respectively;
- (2)** One (1) representative from the Tennessee historical commission;
- (3)** One (1) representative from a recognized archaeological association in Tennessee;
- (4)** Three (3) members shall be persons of Native American descent of at least one-quarter ($\frac{1}{4}$) blood quantum and representative of the Native American community in Tennessee; and
- (5)** One (1) member from the public at large.

- (d)** The members of the council shall receive no salary; provided, that travel expenses incurred by such members in the performance of duties with respect to the council shall be reimbursed in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.
- (e)** The duties of the council shall be to advise the commissioner of environment and conservation and the state archaeologist on all matters of policy relating to the activities of the division and to the employment of professional personnel. It is the responsibility of this council to organize and set forth its rules and operational procedures.
- (f)** The council and the state archaeologist shall submit annually a comprehensive report of their activities and the results of their studies to the commissioner and to the governor and to the members of the general assembly in the first month of each calendar year. They shall also from time to time submit such additional and special reports as are deemed advisable.

[Acts 1970, ch. 468, § 3; 1976, ch. 806, § 1(7); T.C.A., § 11-1503; Acts 1982, ch. 675, § 3; 1990, ch. 852, §§ 2-4; 1994, ch. 538, § 2; 1995, ch. 188, §§ 1-3; 2006, ch. 968, §§ 1, 2.]

11-6-104. Excavated artifacts- Property of state- Availability and care.

- (a)** All artifacts and other materials excavated, discovered, donated, or otherwise acquired by the division of archaeology acquired in pursuance of this program shall be the property of the state of Tennessee and be placed under the custodianship of the division of archaeology. The state archaeologist has primary responsibility to assure that the material is properly and adequately safeguarded and available at all reasonable times to interested scientists and to the public insofar as funds and good scientific practices permit. The state archaeologist may, whenever it is consistent with good scientific practices and in the furtherance of the aims and purposes of the division, approve and permit the loan of such objects and materials to nonprofit scientific organizations, public agencies, museums, and institutions of higher learning both within and without Tennessee for purposes of research or public education.
- (b)** There shall be no public exhibition or display of Native American Indian human remains held by the division.

[Acts 1970, ch. 468, § 4; T.C.A., § 11-1504; Acts 1990, ch. 852, § 5.]

11-6-105. Excavation of state lands- Permits- Unauthorized excavation- Penalty.

- (a)** The state of Tennessee reserves to itself the exclusive right and privilege of field archaeology on sites owned or controlled by the state, its agencies, departments, institutions and commissions in order to protect and preserve archaeological and scientific information, matter and artifacts.
- (b)** All such information and artifacts recovered from state lands shall be utilized solely for scientific or public educational purposes and shall remain the property of the state, unless the state archaeologist and the advisory council shall conclude that some artifacts do not merit retention.
- (c)** No person or organization, including any other agents or agencies of the state of Tennessee, unless acting as a duly authorized agent of the division of archaeology, shall excavate upon any site situated on lands owned or controlled by the state or any agency thereof.
- (d)** Permits and contracts for archaeological exploration or excavation may be granted by the state archaeologist through the division for such periods of time and under such terms and conditions as the state archaeologist may from time to time determine.
- (e)** All artifacts, photographs and records obtained by such agents shall remain the property of the state, subject to the decision of the state archaeologist and the advisory council, and shall be maintained in agreed upon public repositories.
- (f)** Any person, corporation, society or organization conducting such explorations or excavations upon lands owned or controlled by the state or any agency thereof without having first obtained permit from the state archaeologist commits a Class A misdemeanor, except that any violation occurring on a site listed in the Tennessee register of archaeological sites where the commercial or archaeological value of the artifact involved and the cost of restoration or repair of such archaeological site or artifact exceeds the sum of five thousand dollars (\$5,000) is a Class E felony.
- (g)** Any and all artifacts and material excavated by such person or organization shall be forfeited to the state and shall be delivered forthwith to the division.

[Acts 1970, ch. 468, § 5; 1973, ch. 77, § 2; T.C.A., § 11-1505; Acts 1984, ch. 801, § 1; 1990, ch. 852, §§ 6, 7.]

11-6-106. Defacement of sites or artifacts- Misdemeanor.

In order that sites and artifacts on state-owned or controlled land shall be protected for the benefit of the public, it is a misdemeanor for any person, natural or corporate, to write upon, carve upon, paint, deface, mutilate, destroy, or otherwise injure any object of antiquity, artifact, Indian painting, Indian carving, or sites and all such acts of vandalism shall be punished as Class A misdemeanors according to the provisions of this chapter.

[Acts 1970, ch. 468, § 6; T.C.A., § 11-1506; Acts 1989, ch. 591.]

11-6-107. Discovery of sites, artifacts or human remains- Notice to division, contractors and authorities.

- (a)** All state agencies, departments, institutions and commissions, as well as all counties and municipalities, shall cooperate fully with the division of archaeology.
- (b)** Where any sites or artifacts may be found or discovered on property owned or controlled by the state or by any county or municipality, the agency, bureau, commission, governmental subdivision, or county or municipality having control over or owning such property and which is preparing to initiate construction or other earth-moving activities upon such property, or is currently performing work of this type upon such property, the public body having custody of the land shall comply with subsection (d) and is directed to urge supervisors of such works to notify the division of the discovery and location of such sites or artifacts immediately, and to cooperate to the fullest extent practicable with the division, either to prevent the destruction of such sites and artifacts or to allow the division to obtain maximum information and artifacts before these locations are disturbed or destroyed.
- (c)** It is the responsibility of the state agencies to have the provisions of this chapter made known to contractors who are to perform work upon any such public lands, and contractors shall be required to comply with the provisions of this chapter.
- (d)** **(1)** Any person who encounters or accidentally disturbs or disinters human remains on either publicly or privately owned land, except during excavations authorized under this chapter, shall:
 - (A)** Immediately cease disturbing the ground in the area of the human remains; and
 - (B)** Notify either the coroner or the medical examiner, and a local law enforcement agency.
- (2)** Either the coroner or the medical examiner shall, within five (5) working days, determine whether the site merits further investigation within the scope of such official's duties.
- (3)** If the coroner or the medical examiner, and law enforcement personnel, have no

forensic or criminal concerns with regard to the site, then the coroner or the medical examiner shall notify the department.

- (4) Human remains and burial objects reported to the division shall be treated as provided in §§ 11-6-104 and 11-6-119, and/or title 46, chapter 4, if applicable.
 - (5) A person who violates subdivision (d)(1)(A) or (B) commits a Class A misdemeanor;
 - (6) The provisions of this section do not apply to:
 - (A) Normal farming activity, including, but not limited to, plowing, disking, harvesting and grazing; provided, that if human remains are discovered or disturbed, a report should be made to the officials specified in subdivision (d)(1)(B); or
 - (B) Surface collecting.
 - (7) Nothing in this chapter shall be construed to grant a right of access or occupation to the public without the landowner's permission.
- (e) All archaeological site clearance work carried out pursuant to this section shall, in as far as practicable, be scheduled so as not to interfere with construction activities, and such clearance work shall only be conducted at sites which have the potential to yield information significant to the scientific study of Tennessee's aboriginal and historic past.

[Acts 1970, ch. 468, § 7; T.C.A., § 11-1507; Acts 1990, ch. 852, §§ 8, 9.]

11-6-108. State lands Reserved from sale- Procedure.

- (a) Upon written notice to the commissioner of general services, given by the state archaeologist, the commissioner shall reserve from sale any state lands, including lands forfeited to the state for nonpayment of taxes, on which sites or artifacts are located or may be found; provided, that the reservation of such lands from sale may be confined to the actual location of the site or artifacts.
- (b) When such site or artifacts have been explored, excavated, or otherwise examined to the extent desired by the division of archaeology, the state archaeologist shall then file with the commissioner a statement releasing such lands and permitting the sale of such lands.

[Acts 1970, ch. 468, § 8; T.C.A., § 11-1508.]

11-6-109. Private land Trespass, vandalism, and unauthorized activities- Permission- Artifacts- Prohibited storage, dumping or littering.

- (a)** It shall be deemed an act of trespass and a Class A misdemeanor for any person, natural or corporate, to excavate and remove artifacts from the private land of any owner without first obtaining the owner's express permission.
- (b)** No person, corporation, partnership, association or any other entity shall excavate, damage, vandalize or remove any artifact from or otherwise alter or deface any site listed in the Tennessee register of archaeological sites without first obtaining landowner permission.
- (c)** No person, corporation, partnership, association or any other entity shall sell, offer to sell, purchase or offer to purchase, or otherwise exchange any artifact from a site listed in the Tennessee register of archaeological sites if the artifact has been removed or received in violation of this section.
- (d)** No person, corporation, partnership, association or any other entity shall store, dump, litter or otherwise dispose of any garbage, dead animal, sewage or toxic substance in any cave or sinkhole listed in the Tennessee register of archaeological sites.

[Acts 1970, ch. 468, § 9; T.C.A., § 11-1509; Acts 1984, ch. 801, § 2; 1989, ch. 591.]

11-6-110. Designation as archaeological site.

An archaeological site of significance in the scientific study of Tennessee's aboriginal past or important to public knowledge and appreciation of this history may be publicly designated by the commissioner of environment and conservation and placed in the Tennessee register of archaeological sites; provided, that no sites shall be so designated without the express written consent of the state agency having jurisdiction over the land in question or, if it is privately owned land, the owner thereof; provided, that any person or entity having given its permission may revoke such permission on giving thirty (30) days' written notice of its intent to revoke to the division of archaeology, which revocation will automatically take place on the expiration of the thirty (30) days. Recommendations for such designations shall be made by the state archaeological advisory council in consultation with the state archaeologist and such recommendations, together with appropriate supporting data, shall be submitted to the commissioner. In addition to the above, any landowner may petition the commissioner to have any archaeological site located on the landowner's property publicly designated and placed in the Tennessee register of archaeological sites.

[Acts 1970, ch. 468, § 10; T.C.A., § 11-1510; Acts 1984, ch. 801, § 3.]

11-6-111. Sites threatened by construction projects- Contract with corporations or organizations.

The division of archaeology may make a contract with any corporation or organization for the conduct of archaeology upon any site, particularly sites threatened with damage or destruction by public or private construction projects.

[Acts 1970, ch. 468, § 11; T.C.A., § 11-1511.]

11-6-112. Violations Penalties Enforcement powers.

- (a)** All acts declared to be misdemeanors in this part, and not otherwise classified, are Class A misdemeanors.
- (b)** All acts declared to be felonies in this part, and not otherwise classified, are Class E felonies.
- (c)** When properly commissioned and qualified by the commissioner of environment and conservation, employees of the division of archaeology shall have all of the police powers necessary to enforce all state laws and all rules and regulations made and published by the department regarding archaeological sites which are authorized for park superintendents and park rangers by § 11-3-107, within any of the archaeological sites for the purpose of enforcing the provisions of §§ 11-6-104 11-6-106.

[Acts 1970, ch. 468, § 12; 1973, ch. 77, § 3; T.C.A., § 11-1512; Acts 1984, ch. 801, § 4; 1989, ch. 591, §§ 22, 112; 1990, ch. 852, § 10.]

11-6-113. Contracts and cooperative agreements- Authorization.

The department of transportation is hereby authorized and directed to enter into appropriate contracts and cooperative agreements with the division of archaeology and the United States bureau of public roads and to expend funds, both state and federal, in aid of archaeological survey, salvage, and preservation on any lands and rights-of-way now or hereafter coming into its control in order that the purposes of this chapter shall be achieved.

[Acts 1970, ch. 468, § 13; impl. am. Acts 1972, ch. 829, § 7; 1973, ch. 77, § 4; T.C.A., § 11-1513.]

11-6-114. Acceptance of gifts and grants- Title to land.

- (a)** The division of archaeology is hereby authorized to accept grants, bequests, devises, gifts, and donations for purposes of furthering the state program in archaeology and to expend funds so received for those purposes.
- (b)** The department of environment and conservation has full power to accept and hold title to land or interests in land in the name of the state for the purposes of this chapter.

[Acts 1970, ch. 468, § 14; T.C.A., § 11-1514.]

11-6-115. Tennessee Archaeological Society- Support of programs.

- (a)** The division of archaeology is hereby authorized to assist and support the programs of the Tennessee Archaeological Society to the extent that the purposes and aims of the two (2) coincide.
- (b)** The Tennessee Archaeological Society is hereby requested to assist and cooperate with the purposes and programs of the division of archaeology.

[Acts 1970, ch. 468, § 15; T.C.A., § 11-1515.]

11-6-116. Excavation of areas containing Native American Indian human remains- On-site representatives- Notice of intent to remove remains.

- (a)** When a burial ground or other area containing human remains of Native American Indians is excavated, representatives of Native American Indians shall have a right to be present on the site at all times excavation or treatment of such remains is taking place.
- (b)** The department shall promulgate regulations governing application procedures for and the number of representatives to be present on sites.
- (c)** Any person engaged in work involving the removal of Native American Indian human remains must notify the state archaeologist in writing at least ten (10) days prior to the time a petition is filed under the provisions of title 46, chapter 4. Within two (2) business days of receiving such notice, the state archaeologist shall forward such notice to the Native American members of the archaeological advisory council and the chair of the Tennessee

commission of Indian affairs.

[Acts 1990, ch. 852, § 11; 1999, ch. 509, § 1.]

11-6-117. Display of Native American Indian human remains.

There shall be no public exhibition or display of Native American Indian human remains, except as evidence in a judicial proceeding.

[Acts 1990, ch. 852, § 11.]

11-6-118. Import or export of human remains.

- (a)** The import into Tennessee or the export from Tennessee of human remains is prohibited except in the following instances:
- (1)** Import or export by hospitals, medical schools, colleges or universities for education or research purposes;
 - (2)** Import for burial or reburial in Tennessee or export for burial or reburial in another state or country;
 - (3)** Import or export for preparation for burial or reburial; or
 - (4)** Import or export for use as evidence in any judicial proceeding.
- (b)** A violation of subsection (a) is a Class E felony.
- (c)** Any remains so imported or exported shall be confiscated and subject to disposition as provided in §§ 11-6-104 and 11-6-119.

[Acts 1990, ch. 852, § 11; 2006, ch. 896, § 2.]

11-6-119. Reburial of human remains or Native American burial objects following discovery or confiscation.

Any human remains or any Native American burial objects discovered in the course of an excavation, exhumation or accidentally, and any such remains and their associated burial objects confiscated under the provisions of § 11-6-118, shall be properly reburied following scientific analysis within six (6) months of such discovery or confiscation in accordance with procedures formulated by the advisory council which are appropriate to Native American traditions. Upon request for scientific or medical research, the director of the division may grant an extension of not more than six (6) months before reburial is required.

[Acts 1990, ch. 852, § 11; 1999, ch. 509, §§ 2, 3.]

11-6-120. Volunteer programs- Provisions of archaeological information to schools and other interest groups- Tennessee Archaeology Awareness Week.

- (a)** Within existing resources and personnel, the division is authorized to carry out a coordinated program using qualified volunteers to implement the purposes of this part pursuant to § 11-6-101.
- (b)** The division may establish an organized program of providing archaeological information and programs to schools and other interest groups.
- (c)** The division may establish and coordinate activities focused on one (1) special week of the year to promote the archaeological heritage of Tennessee. This week shall be designated the Tennessee Archaeology Awareness Week.

[Acts 1995, ch. 91, § 1.]

11-6-121. Abandoned shipwrecks.

- (a) Since the congress has found that the state has certain responsibilities under the Abandoned Shipwreck Act of 1987 (Public Law No. 100-298), the division of archeology is authorized to:
- (1) Develop a plan regarding significant shipwreck sites in Tennessee which will include management strategies for the preservation and conservation of shipwrecks;
 - (2) Recognize important events and geographic locations in the history and development of river navigation;
 - (3) Establish a geographic data base and an information system that can be used to locate, track, and cross-reference significant shipwrecks;
 - (4) Acquire or provide funds for the research and identification of shipwrecks; and
 - (5) Expend funds received from state appropriations and other sources to make grants to municipalities, counties, and non-profit organizations for the purpose of this section.
- (b) The division is authorized, in carrying out its purposes, to:
- (1) Accept loans or grants, or both, of money, materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose.
 - (2) Receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration from any person, firm, or corporation, or from the state or any agency or instrumentality thereof or from any county, municipal corporation or local government or governing body; and
 - (3) Hold, use, administer and expend such sum or sums as may hereafter be received as income, as gifts or as appropriations from the general assembly for any of the purposes of the division.

[Acts 1995, ch. 218, § 3.]