AMENDED

February 25, 2010

**H. 4129**

Introduced by Reps. Funderburk, Umphlett, Hodges, Clemmons, Whipper, R.L. Brown and Weeks

S. Printed 2/25/10--H.

Read the first time June 16, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑11‑780 SO AS TO PROVIDE THAT IT IS UNLAWFUL TO WILFULLY, KNOWINGLY, OR MALICIOUSLY ENTER UPON THE POSTED LANDS OF ANOTHER OR THE STATE AND INVESTIGATE, DISTURB, OR EXCAVATE A PREHISTORIC OR HISTORIC SITE FOR THE PURPOSE OF DISCOVERING, UNCOVERING, MOVING, REMOVING, OR ATTEMPTING TO REMOVE AN ARCHAEOLOGICAL RESOURCE; TO PROVIDE PENALTIES AND CIVIL REMEDIES; AND TO PROVIDE EXCEPTIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑780. (A) As used in this section:

(1) ‘Archaeological resource’ means all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.

(2) ‘Archaeological value’ means the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(3) ‘Commercial value’ means the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained.

(4) ‘Cost of restoration and repair’ means the sum of the costs incurred for emergency restoration or repairs to an archaeological resource, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(a) reconstruction of the archaeological resource;

(b) stabilization of the archaeological resource;

(c) ground contour reconstruction and surface stabilization;

(d) physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(e) examination and analysis of the archaeological resource, including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining resources that cannot be otherwise conserved; or

(f) preparation of reports relating to any of the activities described in this section.

(5) ‘Posted lands’ means lands where an owner or tenant has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16‑11‑600.

(B) The Office of the State Archaeologist is authorized and may be called upon to determine, calculate, or compute archaeological value, commercial value, or the cost of restoration and repair of an archaeological resource.

(C) It is unlawful for a person to wilfully, knowingly, or maliciously enter upon the posted lands of another or the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

(D) For a first offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(E) For a second offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

(F) For a third or subsequent offense, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(G) For the purposes of subsection (E) and (F) of this section, a second, third, or subsequent offense may include no offense that occurs more than ten years after conviction for the first offense.

(H) All equipment and conveyances including, but not limited to, trailers, motor vehicles and watergoing vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44‑53‑520, if the offender either owns the equipment or conveyance or is a resident of the equipment or conveyance owner’s household.

(I) The landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resource’s archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney’s fees and court costs.

(J) Nothing contained in this section shall limit or interfere with a landowner’s lawful use of his property or with the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

(K) Nothing contained in this section shall limit or interfere with:

(1) a landowner’s lawful use of his property;

(2) the lawful acts of a landowner’s employee, agent, or independent contractor acting in the scope of and in the course of his employment, agreement, or contract;

(3) the lawful acts of a utility worker acting in the scope of and in the course of his employment; or

(4) the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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