



# State of Tennessee

## PUBLIC CHAPTER NO. 1033

### HOUSE BILL NO. 1574

**By Representatives McDaniel, Whitson, Dawn White, Hazlewood, Sparks, Daniel, Moody, Sherrell, Timothy Hill, Sanderson**

**Substituted for: Senate Bill No. 2520**

**By Senators Ketron, Bailey, Crowe, Niceley, Southerland, Hensley**

AN ACT to amend Tennessee Code Annotated, Section 4-1-412, relative to historical preservation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-1-412(e), is amended by adding the following language as new subdivisions:

(4) This section shall not apply to a memorial under the control of an accredited museum when:

(A) Housed within the interior of the museum, or museum storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(5) This section shall not apply to a memorial under the control of a public library or public archive when:

(A) Housed within the interior of the library or archive, or library or archive storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

SECTION 2. Tennessee Code Annotated, Section 4-1-412(b), is amended by deleting subdivision (2) and substituting instead the following:

(2) No memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.

(3)

(A) Notwithstanding subdivision (b)(1), a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorial.

(B) This subdivision (b)(3) shall not be construed to authorize:

(i) Permanent removal or concealment of a memorial; or

(ii) Temporary removal or concealment of a memorial for a period exceeding forty-five (45) calendar days in any twelve-month period.

SECTION 3. Tennessee Code Annotated, Section 4-1-412(c), is amended by deleting subdivision (1) and substituting instead the following:

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(1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) or (b)(2), or both, if applicable. A public entity shall petition the commission for a waiver prior to undertaking any action or transaction, including any action or transaction involving a nonprofit entity or private party, that could foreseeably violate the restrictions imposed by this section.

SECTION 4. Tennessee Code Annotated, Section 4-1-412(c), is amended by deleting subdivision (6) and substituting instead the following:

(6) An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission. In addition, an interested entity, group, or individual may intervene in any petition for waiver by filing written notice with the commission not less than forty-five (45) calendar days prior to the final hearing. Upon filing notice, the interested entity, group, or individual shall be a party in all proceedings on the petition for waiver, shall receive copies of all filings, and may present relevant testimony and evidence at any hearing on the petition. Once notice is filed with the commission, the status of the interested entity, group, or individual as a party to the petition for waiver, and any subsequent or concurrent administrative or judicial proceedings, may only be waived in writing by the interested entity, group, or individual.

SECTION 5. Tennessee Code Annotated, Section 4-1-412(c)(9), is amended by deleting the language "or interested entity, group, or individual who testified or submitted evidence at the final hearing" and substituting instead the language "or interested entity, group, or individual who intervened in accordance with subdivision (c)(6)".

SECTION 6. Tennessee Code Annotated, Section 4-1-412, is amended by deleting subsection (d) and substituting instead the following:

(d) Any entity, group, or individual who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, through petition for declaratory order, or through administrative involvement in either the waiver or complaint process, has standing to seek injunctive or other relief in chancery court of Davidson County to enforce this section. To the extent necessary to preserve the status of any memorial prior to a final determination on a waiver or complaint by the commission, administrative law judge, or chancery court, the court shall issue a restraining order or injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond or other security shall be required for any restraining order or other injunctive relief issued.

SECTION 7. Tennessee Code Annotated, Section 4-1-412, is amended by adding the following language as new subsections:

( )

(1) The commission has authority to receive and consider complaints alleging violations of subdivision (b)(1), (b)(2), or (b)(3)(B).

(2) Complaints may be filed by any entity, group, or individual. All complaints must be in writing on a uniform complaint form to be posted on the website of the commission. Complaints must be filed within one hundred twenty (120) calendar days of the alleged violation.

(3) A hearing on a complaint must be set within one hundred twenty (120) calendar days after the complaint is filed. Multiple complaints alleging the same violation must be joined. The complainant and public entity shall be given at least thirty (30) calendar days' notice of the date of the hearing. The complainant and the public entity shall be afforded the opportunity to present evidence at the hearing. At the hearing, the commission may determine that a violation has occurred by a majority vote of the entire membership of the commission; provided, that if the complainant is a member of the commission, the member shall not participate in the commission's deliberations or vote on the complaint. If

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a violation has occurred, the commission shall prepare a written violation determination. The complaint shall be deemed dismissed if a violation is not determined to have occurred at the hearing. Once acted upon, no complaint alleging the same, or substantially the same, violation by the same public entity during the same episode shall be received and considered by the commission unless initiated by the commission.

(4) The commission shall transmit a copy of a violation determination to the public entity and to the department of economic and community development.

(5) A public entity that violates any provision of this section shall be precluded from entering into grant contracts administered by the commission and the department of economic and community development for a period of five (5) years from the date upon which a violation determination is made.

( ) The commission, at its discretion, may assist any public entity or historic organization with preservation of a memorial through consultation, best practices, or other available resources.

( ) Notwithstanding any provision of this section, in lieu of a waiver, a historic organization may petition the commission to transfer ownership of, relocate, or both transfer ownership of and relocate, a memorial to the historic organization with the consent of the public entity exercising control over the memorial. The petition must be filed with a copy of a resolution, ordinance, or order from the governing body of the public entity consenting to the transfer, relocation, or both transfer and relocation. The petition must include an assessment of costs associated with the transfer, relocation, or both transfer and relocation, and identify who will be responsible for the costs. If the petition includes relocation, a description or map of the proposed location must be submitted with the petition. A memorial may be relocated only to an accessible and suitable location within this state as determined by the commission. The commission may approve a petition upon a majority vote of the entire membership of the commission.

SECTION 8. Tennessee Code Annotated, Section 4-1-412, is amended by adding the following language as a new subsection:

( ) The Uniform Administrative Procedures Act, compiled in chapter 5 of this title, shall apply to this section except to the extent that the provisions of this section conflict, in which case this section shall control.

SECTION 9. Tennessee Code Annotated, Section 4-1-412(a)(7)(B), is amended by deleting the language "nameplate, plaque" and substituting instead the language "nameplate, historical marker, plaque".

SECTION 10. This act is remedial in nature and shall be liberally construed in favor of historical preservation.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.

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PASSED: April 25, 2018

  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

  
RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 21<sup>st</sup> day of May 2018

  
BILL HASLAM, GOVERNOR