

1 **SECOND ENROLLMENT**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2542**

5 (By Delegate Brown)

6 [Amended and again passed, in an effort to meet the objections of
7 the Governor, March 18, 2011; in effect ninety days from
8 passage.]

9
10 AN ACT to amend and reenact §37-13A-1, §37-13A-2 and §37-13A-5 of
11 the Code of West Virginia, 1931, as amended, all relating to
12 access to cemeteries and grave sites located on privately
13 owned land generally; allowing access for the purposes of
14 installation of monuments or grave markers; allowing access to
15 an authorized person who has the written permission of a
16 family member or descendant of a deceased person to enter the
17 property solely for the purpose of installing monuments or
18 grave markers or preparing the cemetery plot for burying a
19 deceased person by those granted rights of burial to that
20 plot; requiring notice and description of monuments or grave
21 markers to be installed; permitting denial of installation by
22 property owner; and providing injunctive relief.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §37-13A-1, §37-13A-2 and §37-13A-5 of the Code of West
25 Virginia, 1931, as amended, be amended and reenacted, all to read
26 as follows:

1 **ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.**

2 **§37-13A-1. Access of certain persons to cemeteries and graves**
3 **located on private land.**

4 (a) Any authorized person who wishes to visit a cemetery or
5 grave site located on privately owned land and for which no public
6 ingress or egress is available, shall have the right to reasonable
7 ingress or egress for the purposes described in subsection (c) of
8 this section after providing the owner of the privately owned land
9 with reasonable notice as defined in subsection (b) of this
10 section.

11 (b) An authorized person intending to visit the cemetery or
12 grave site for the purpose of installing a monument or grave marker
13 pursuant to subdivision (2), subsection (c) of this section, shall
14 give reasonable notice to the property owner which is to include a
15 description of the monument or grave marker to be installed. As
16 used in this article, "reasonable notice" means written notice of
17 the date and time the authorized person intends to visit the
18 cemetery or grave site delivered to the property owner at least ten
19 days prior to the date of the intended visit.

20 (c) The right of access to cemeteries or grave sites provided
21 in subsection (a) of this section shall be during reasonable hours
22 and only for the purposes of:

23 (1) Visiting graves;

24 (2) Maintaining the grave site or cemetery, including the
25 installation of a monument or a grave marker: *Provided, That a*

1 property owner may deny access to the cemetery or grave site
2 because the owner objects to the installation of the type or style
3 of the monument or grave marker that has been described in the
4 notice given pursuant to subsection (b) of this section;

5 (3) Burying a deceased person in a cemetery plot by those
6 granted rights of burial to that plot; and

7 (4) Conducting genealogy research.

8 (d)(1) The access route to the cemetery or grave site may be
9 designated by the landowner if no traditional access route is
10 obviously visible by a view of the property. If no traditional
11 access route is obviously visible by a view of the property, the
12 landowner is not required to incur any expense in improving a
13 designated access route.

14 (2) Unless the property owner has caused a traditional access
15 route to the cemetery or grave site to be unusable or unavailable,
16 the property owner is not required to make any improvements to
17 their property to satisfy the requirement of providing reasonable
18 ingress and egress to a cemetery or burial site pursuant to this
19 section.

20 (e) A property owner who is required to permit authorized
21 persons reasonable ingress and egress for the purpose of visiting
22 a cemetery or grave site and who acts in good faith and in a
23 reasonable manner pursuant to this section is not liable for any
24 personal injury or property damage that occurs in connection with
25 the access to the cemetery or grave site.

26 (f) Nothing in this section shall be construed to limit or

1 modify the power or authority of a court in any action of law or
2 equity to order the disinterment and removal of the remains from a
3 cemetery and interment in a suitable location.

4 **§37-13A-2. Definitions.**

5 In this article:

6 (1) "Authorized person" means:

7 (A) A family member, close friend or descendant of a deceased
8 person;

9 (B) A cemetery plot owner;

10 (C) A person who has the written permission of a family member
11 or descendant of a deceased person to enter the property solely for
12 the purpose of installing monuments or grave markers or preparing
13 the cemetery plot for burying a deceased person by those granted
14 rights of burial to that plot; or

15 (D) A person engaged in genealogy research.

16 (2) "Governmental subdivision" means any county commission or
17 municipality.

18 (3) "Reasonable ingress and egress" or "reasonable access"
19 means access to the cemetery or grave site within ten days of the
20 receipt of written notice of the intent to visit the cemetery or
21 grave site. If the property owner cannot provide reasonable access
22 to the cemetery or grave site on the desired date, the property
23 owner shall provide reasonable alternative dates when the property
24 owner can provide access within five days of the receipt of the
25 initial notice.

26 **§37-13A-5. Cause of action for injunctive relief.**

1 (a) An authorized person denied reasonable access under the
2 provisions of this article, including the denial of permission to
3 use vehicular access or the denial of permission to access the
4 cemetery or grave site to install a monument or grave marker, may
5 institute a proceeding in the circuit court of the county in which
6 the cemetery or grave site is located to enjoin the owner of the
7 private lands on which the cemetery or grave site is located, or
8 his or her agent, from denying the authorized person reasonable
9 ingress and egress to the cemetery or grave site for the purposes
10 set forth in this article. In granting relief, the court may set
11 the frequency of access, hours and duration of the access.

12 (b) The court or the judge thereof may issue a preliminary
13 injunction in any case pending a decision on the merits of any
14 application filed without requiring the filing of a bond or other
15 equivalent security.