

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2542

(By Delegate Brown)



Passed March 12, 2011

In Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2542

(BY DELEGATE BROWN)

[Passed March 12, 2011; in effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

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

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

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

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

21 (1) Visiting graves;

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

24 a property owner may deny access to the cemetery or grave
25 site because the owner objects to the installation of the type
26 or style of the monument or grave marker that has been
27 described in the notice given pursuant to subsection (b),
28 section one of this article;

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

31 (4) Conducting genealogy research.

32 (d)(1) The access route to the cemetery or grave site may
33 be designated by the landowner if no traditional access route
34 is obviously visible by a view of the property. If no
35 traditional access route is obviously visible by a view of the
36 property, the landowner is not required to incur any expense
37 in improving a designated access route.

38 (2) Unless the property owner has caused a traditional
39 access route to the cemetery or grave site to be unusable or
40 unavailable, the property owner is not required to make any
41 improvements to their property to satisfy the requirement of
42 providing reasonable ingress and egress to a cemetery or
43 burial site pursuant to this section.

44 (e) A property owner who is required to permit
45 authorized persons reasonable ingress and egress for the
46 purpose of visiting a cemetery or grave site and who acts in
47 good faith and in a reasonable manner pursuant to this section
48 is not liable for any personal injury or property damage that
49 occurs in connection with the access to the cemetery or grave
50 site.

51 (f) Nothing in this section shall be construed to limit or
52 modify the power or authority of a court in any action of law
53 or equity to order the disinterment and removal of the
54 remains from a cemetery and interment in a suitable location.

§37-13A-2. Definitions.

1 In this article:

2 (1) “Authorized person” means:

3 (A) A family member, close friend or descendant of a
4 deceased person;

5 (B) A cemetery plot owner;

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

12 (D) A person engaged in genealogy research.

13 (2) “Governmental subdivision” means any county
14 commission or municipality.

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

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

1 (a) An authorized person denied reasonable access under
2 the provisions of this article, including the denial of

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor