

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2542**

4 (By Delegate Brown)

5  
6 (Originating in the Committee on Finance)

7 [February 15, 2011]

8  
9  
10 A BILL 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 a person who has the written permission of a family member,  
16 close friend 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 objections to  
22 installation; requiring written reasons for denial of access  
23 to install; and providing injunctive relief.

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

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

1 as follows:

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

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

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

12 (2) Any authorized person who wishes to visit a cemetery or  
13 grave site located on privately owned land and for which no public  
14 ingress or egress is available for the purpose of installing a  
15 monument or grave marker as described in subsection (b) of this  
16 section shall have the right to reasonable ingress or egress for  
17 that purpose after providing the owner of the privately owned land  
18 with reasonable notice as defined in section two of this article.

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

22 (1) Visiting graves;

23 (2) Maintaining the grave site or cemetery, including the  
24 installation of monuments or grave markers;

25 (3) Burying a deceased person in a cemetery plot by those

1 granted rights of burial to that plot; and

2 (4) Conducting genealogy research.

3 (c)(1) The access route to the cemetery or grave site may be  
4 designated by the landowner if no traditional access route is  
5 obviously visible by a view of the property. If no traditional  
6 access route is obviously visible by a view of the property, the  
7 landowner is not required to incur any expense in improving a  
8 designated access route.

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

15 (d) A property owner who is required to permit authorized  
16 persons reasonable ingress and egress for the purpose of visiting  
17 a cemetery or grave site and who acts in good faith and in a  
18 reasonable manner pursuant to this section is not liable for any  
19 personal injury or property damage that occurs in connection with  
20 the access to the cemetery or grave site.

21 (e) Nothing in this section shall be construed to limit or  
22 modify the power or authority of a court in any action of law or  
23 equity to order the disinterment and removal of the remains from a  
24 cemetery and interment in a suitable location.

25 **§37-13A-2. Definitions.**

26 In this article:

1 (1) "Authorized person" means:  
2 (A) A family member, close friend or descendant of a deceased  
3 person;  
4 (B) A cemetery plot owner; ~~or~~  
5 (C) A person who has the written permission of a family  
6 member, close friend or descendant of a deceased person to enter  
7 the property solely for the purpose of installing monuments or  
8 grave markers or preparing the cemetery plot for burying a deceased  
9 person by those granted rights of burial to that plot; or  
10 (D) A person engaged in genealogy research.  
11 (2) "Governmental subdivision" means any county commission or  
12 municipality.  
13 (3) "Reasonable ingress and egress" or "reasonable access"  
14 means access to the cemetery or grave site within ten days of the  
15 receipt of written notice of the intent to visit the cemetery or  
16 grave site. If the property owner cannot provide reasonable access  
17 to the cemetery or grave site on the desired date, the property  
18 owner shall provide reasonable alternative dates when the property  
19 owner can provide access within five days of the receipt of the  
20 initial notice. If the property owner denies access to the  
21 cemetery or grave site because the owner objects to the  
22 installation of the monument or grave marker that has been  
23 described pursuant to subdivision (4) of this section, the property  
24 owner shall provide the reasons for the denial in writing to the  
25 authorized person within five days of the receipt of the initial  
26 notice.

1 (4) "Reasonable notice" means written notice of the date and  
2 time the authorized person intends to visit the cemetery or grave  
3 site delivered to the property owner at least ten days prior to the  
4 date of the intended visit. For authorized persons intending to  
5 visit the cemetery or grave site for the purpose of installing a  
6 monument or grave marker, the notice shall include a description of  
7 the monument or grave marker to be installed.

8 **§37-13A-5. Cause of action for injunctive relief.**

9 (a) An authorized person denied reasonable access under the  
10 provisions of this article, including the denial of permission to  
11 use vehicular access or the unreasonable denial of permission to  
12 access the cemetery or grave site to install a monument or grave  
13 marker, may institute a proceeding in the circuit court of the  
14 county in which the cemetery or grave site is located to enjoin the  
15 owner of the private lands on which the cemetery or grave site is  
16 located, or his or her agent, from denying the authorized person  
17 reasonable ingress and egress to the cemetery or grave site for the  
18 purposes set forth in this article. In granting relief, the court  
19 may set the frequency of access, hours and duration of the access.

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