

COMMITTEE SUBSTITUTE

FOR

H. B. 2542

(BY DELEGATE BROWN)

(Originating in the Committee on Finance)
[February 15, 2011]

A BILL 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 a person who has the written permission of a family member, close friend 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 objections to installation; requiring written reasons for denial of access to install; 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) (1) Any authorized person who wishes to visit a
2 cemetery or grave site located on privately owned land and
3 for which no public ingress or egress is available, shall have
4 the right to reasonable ingress or egress for the purposes
5 described in subsection (b) of this section after providing the
6 owner of the privately owned land with reasonable notice as
7 defined in section two of this article.

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

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

19 (1) Visiting graves;

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

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

24 (4) Conducting genealogy research.

25 (c)(1) The access route to the cemetery or grave site may
26 be designated by the landowner if no traditional access route

27 is obviously visible by a view of the property. If no
28 traditional access route is obviously visible by a view of the
29 property, the landowner is not required to incur any expense
30 in improving a designated access route.

31 (2) Unless the property owner has caused a traditional
32 access route to the cemetery or grave site to be unusable or
33 unavailable, the property owner is not required to make any
34 improvements to their property to satisfy the requirement of
35 providing reasonable ingress and egress to a cemetery or
36 burial site pursuant to this section.

37 (d) A property owner who is required to permit
38 authorized persons reasonable ingress and egress for the
39 purpose of visiting a cemetery or grave site and who acts in
40 good faith and in a reasonable manner pursuant to this
41 section is not liable for any personal injury or property
42 damage that occurs in connection with the access to the
43 cemetery or grave site.

44 (e) Nothing in this section shall be construed to limit or
45 modify the power or authority of a court in any action of law

46 or equity to order the disinterment and removal of the
47 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; or

6 (C) A person who has the written permission of a family
7 member, close friend or descendant of a deceased person to
8 enter the property solely for the purpose of installing
9 monuments or grave markers or preparing the cemetery plot
10 for burying a deceased person by those granted rights of
11 burial to that plot; 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. If the property owner
23 denies access to the cemetery or grave site because the owner
24 objects to the installation of the monument or grave marker
25 that has been described pursuant to subdivision (4) of this
26 section, the property owner shall provide the reasons for the
27 denial in writing to the authorized person within five days of
28 the receipt of the initial notice.

29 (4) “Reasonable notice” means written notice of the date
30 and time the authorized person intends to visit the cemetery or
31 grave site delivered to the property owner at least ten days prior
32 to the date of the intended visit. For authorized persons
33 intending to visit the cemetery or grave site for the purpose of
34 installing a monument or grave marker, the notice shall include
35 a description of the monument or grave marker to be installed.

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

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