# WEST VIRGINIA CODE CHAPTER 37 ARTICLE 13A

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**§37-13A-1. Access of certain persons to cemeteries and graves located on private land; limiting liability of landowners.**

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

(b) An authorized person intending to visit the cemetery or grave site for the purpose of installing a monument or grave marker pursuant to subdivision (2), subsection (c) of this section, shall give reasonable notice to the property owner which is to include a description of the monument or grave marker to be installed. As used in this article, "reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave site delivered to the property owner at least 10 days prior to the date of the intended visit.

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

(1) Visiting graves;

(2) Maintaining the grave site or cemetery, including the installation of a monument or a grave marker: *Provided*, That a property owner may deny access to the cemetery or grave site because the owner objects to the installation of the type or style of the monument or grave marker that has been described in the notice given pursuant to subsection (b) of this section;

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

(4) Conducting genealogy research.

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

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

(e) A property owner who is required to permit authorized persons reasonable ingress and egress for the purpose of visiting a cemetery or grave site and who acts in good faith and in a reasonable manner pursuant to this section is not liable for any personal injury or property

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damage that occurs in connection with the access to the cemetery or grave site.

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

(g) A private property owner shall not be held liable for any damage to a cemetery on their property when that damage is caused by individuals conducting familial or social visitations to the cemetery: *Provided*, That this limitation on liability shall not apply if the person conducting the visitation is an agent of the private property owner. Individuals conducting familial and social visitations to a cemetery contemplated by this section are liable for any damage they cause.

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## §37-13A-2. Definitions.

In this article:

(1) "Authorized person" means:

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

(B) A cemetery plot owner;

(C) A 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; or

(D) A person engaged in genealogy research.

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

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

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## §37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

All persons exercising access to a grave site or cemetery under the provisions of this article are responsible for conducting themselves in a manner that does not damage the private lands, the cemetery or grave sites and are liable to the owner of the private lands for any damage caused as a result of their access.

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## §37-13A-4. Limiting the use of motor vehicles on private lands.

The access to a cemetery or grave site on private lands conferred by this article does not include the right to operate motor vehicles on the private lands, unless there is a road or adequate right-of-way that permits access by motor vehicle and the owner has given written permission to use the road or right-of-way or way of necessity.

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

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

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

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## §37-13A-6. Application of article.

The provisions of this article shall not apply to any deed or other written instrument executed prior to the effective date of this article which creates or reserves a cemetery or grave site on private property and which specifically sets forth terms of access.

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## §37-13A-7. Existence of cemetery or grave site, notification.

If a governmental subdivision is notified of the existence of a cemetery, or a marked grave site that is not located in a dedicated cemetery, within its jurisdiction, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or grave site's existence and location. The governmental subdivision shall, upon notification of grave site location, document the location. Data collected shall be deposited with the Division of Culture and History. The notification shall include an explanation of the provisions of this article.

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