

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

SENATE BILL NO. 302

Mr. Davis and Mr. Carrigan
(By Mr.)

PASSED May 8 1963

In Effect from Passage



Filed in Office of the Secretary of State
of West Virginia 3-15-63

JOE F. BURDETT
SECRETARY OF STATE

302

ENROLLED

Senate Bill No. 302

(By MR. DAVIS and MR. CARRIGAN)

[Passed March 8, 1963; in effect from passage.]

AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen, relating to the removal, transfer and disposition of remains in graves located upon privately owned lands.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen, to read as follows:

Article 13. Removal, Transfer and Disposition of Remains in Graves Located Upon Privately Owned Lands.

Section 1. Jurisdiction.—The circuit court of any county
2 shall have jurisdiction and authority to permit and order
3 the removal, transfer and reinterment, or other disposi-
4 tion, of remains in any graves located upon privately
5 owned land within the boundaries of such county under
6 the provisions hereinafter set forth: *Provided*, That the
7 provisions of this article shall not apply to any grave or
8 grave area where title or color of title to the same exists
9 as a matter of public record in any person or persons not
10 a plaintiff or plaintiffs instituting an action pursuant to
11 this article: *Provided, however*, That when title or color
12 of title of public record to such grave or grave area exists
13 in such plaintiff or plaintiffs, the provisions of this article
14 may be available in addition to any other rights or reme-
15 dies provided by law for the removal, transfer and dispo-
16 sition of remains in graves or grave areas.

Sec. 2. Action; Contents of Petition.—Any owner of
2 private lands, may, as plaintiff, institute an action for the
3 purposes set forth in section one of this article by filing
4 a petition before the circuit court of the county in which
5 the lands affected are located. Such petition shall show

6 the title to such lands, the condition of the graves in
7 question, the interests of all persons in such lands and in
8 the remains in such graves, so far as known, the reasons
9 why removal is sought, and the proposed disposition of
10 such remains. The petition shall further show that plain-
11 tiffs have made reasonable and diligent effort to ascertain
12 the identity of each deceased and each deceased's sur-
13 viving next-of-kin, heirs-at-law, administrator, executor
14 or personal representative. The court may, if deemed
15 necessary, appoint a guardian ad litem to protect the
16 interests of known or unknown persons in interest,
17 whether living or dead.

Sec. 3. Parties; Notice.—All owners, lessees and other
2 persons having an interest in such lands, other than plain-
3 tiffs, and also the surviving next-of-kin, heirs-at-law, ad-
4 ministrator, executor or personal representative of each
5 deceased, so far as can be determined through reasonable
6 and diligent effort, shall be made defendants in such ac-
7 tion. Insofar as possible all defendants shall be served
8 with notice of the institution of the action and the date of
9 the first hearing upon the same, such service to be made

10 in the same manner provided by law for the service of
11 process in other civil actions. If the address of any de-
12 fendant be unknown, or, if there be any unknown next-
13 of-kin, heirs-at-law, administrator, executor or personal
14 representative of any known or unknown person whose
15 remains may be interred within any such grave, then, in
16 such event, a copy of said notice shall be published once
17 a week for three consecutive weeks in a newspaper of
18 general circulation in the county prior to the hearing
19 upon the same.

Sec. 4. Hearing.—No sooner than three weeks from the
2 filing of such petition the court shall take evidence upon
3 relief sought, together with any evidence presented in
4 opposition thereto. In granting or denying such relief the
5 court shall consider, as well as other evidence adduced,
6 evidence as to the wishes of all persons concerned, wheth-
7 er living or deceased, and shall exercise a sound discre-
8 tion in granting or refusing, in whole or in part, the re-
9 lief sought. If the court is satisfied with the propriety of
10 the relief sought by plaintiffs it shall enter an order
11 granting the same, either in whole or in part.

Sec. 5. Procedure upon Removal.—Such order permitting removal, transfer and disposition of remains in any grave shall provide that the same shall be done with care, decency and reverence for the remains of the deceased, may require that the services of a licensed funeral director shall be utilized and may be upon any other terms and conditions as the court may deem fit and proper, including the method and manner of disposition of such remains.

Sec. 6. Costs.—In the event that the plaintiff or plaintiffs shall be granted the relief sought, then all costs of such action shall be borne by plaintiffs. In the event that such relief is not granted, or is granted only in part, then such costs may be allocated between the parties as the court shall deem equitable and just. In any event wherein any relief is granted, the costs of removal, transfer and disposition shall be borne by the plaintiffs, including the cost of erecting appropriate memorials to the deceased as the same may be ordered by the court.

Sec. 7. Remedy Herein Provided Cumulative.—This article and the rights and remedies herein provided for

3 shall be cumulative and in addition to other existing
4 rights. The right of eminent domain and the remedy of
5 condemnation of lands shall not be affected hereby. This
6 article shall not apply to burial grounds governed by the
7 provisions of article five, chapter thirty-five of this code.

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

O. Ray Parker
Chairman Senate Committee

Edell L. Randall
Chairman House Committee

Originated in the Senate.

Takes effect from passage.

Howard Keyser
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Slaughter
Speaker House of Delegates

The within approved this the 14th
day of March, 1963.

Wm. Baum
Governor

