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
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2542

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(BY DELEGATE BROWN)

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[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.

(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 (c) 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 subdivision (b) 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 ten 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
24 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), section one of this article;

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

38 (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.

44 (c) 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 damage that occurs in connection with the access to the cemetery or grave site.

51 (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.

1 In this article:

2 (1) "Authorized person" means:

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

5 (B) A cemetery plot owner;

6 (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;

12 or

12 (D) A person engaged in genealogy research.

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

15 (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.


1 (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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is disapproved this the 18th day of March, 2011.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 11:00 AM