

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2263

4  
5 By: Representative Pace  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO PROTECT CEMETERIES FROM DESECRATION AND  
10 DISPLACEMENT; TO PROVIDE FUNDS FOR UPKEEP OF  
11 CEMETERIES; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO PROTECT CEMETERIES FROM  
15 DESECRATION AND DISPLACEMENT AND TO  
16 PROVIDE FUNDS FOR UPKEEP OF CEMETERIES.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 5-39-211(a), concerning unlawful mining and  
22 entries into cemeteries, is amended to read as follows:

23 (a) It shall be unlawful for any corporation, company, or individual  
24 to:

25 (1) Mine, extract, or remove coal or any other mineral ~~or~~  
26 substance from under, ~~or~~ beneath, or within one hundred (100) feet of the  
27 boundary of any cemetery, graveyard, or burying place in this state;

28 (2) Make, place, or drive any slope, pit, or entry of any kind  
29 into, under, through, or across any cemetery, graveyard, or other burying  
30 place in this state.  
31

32 SECTION 2. Arkansas Code § 5-39-212 is amended to read as follows:

33 5-39-212. Cemeteries - Access - Debris - Disturbance.

34 (a)(1) It shall be unlawful for any person, firm, corporation,  
35 partnership, or association to construct any fence on any property in such  
36 manner as to enclose any cemetery unless ~~suitable~~ reasonable public access by



1 automobile to the cemetery is provided by gate or otherwise. ~~The word~~  
2 ~~"cemetery", as used in this subsection, is not intended to apply to any~~  
3 ~~private family burial plot which contains fewer than six (6) commercial grave~~  
4 ~~markers and has not been used for burial purposes for at least twenty-five~~  
5 ~~(25) years and which has not had an access road to the burial plot for at~~  
6 ~~least thirty (30) years.~~

7 (2) Nothing in this section prohibits the placement of a fence  
8 around any cemetery for the purpose of defining boundaries or protection of  
9 grave sites;

10 (b)(1) Any person, firm, corporation, partnership, or association  
11 violating any of the provisions of this section shall be guilty of a  
12 misdemeanor and upon conviction shall be fined in any sum not less than ten  
13 dollars (\$10.00) nor more than one hundred dollars (\$100), and every day that  
14 the violation shall exist shall be a separate offense.

15 (2) Fines collected shall be used by the local government toward  
16 upkeep, maintenance, and administrative costs of abandoned cemeteries.

17 (c) As used in this section, "cemetery" means any burying place for  
18 the dead, a burial plot, or a graveyard on any land, public or private, that  
19 includes one (1) or more grave sites, whether marked or unmarked, by  
20 commercial or native stone.

21  
22 SECTION 3 . Arkansas Code § 5-39-401 is amended to read as follows:

23 5-39-401. Destruction or removal.

24 It is unlawful for any person, corporation, company, or other legal  
25 entity to destroy or carry away any cemetery marker or grave marker.

26  
27 SECTION 4. Arkansas Code § 5-71-215(a), concerning defacing of objects  
28 of public respect, is amended to read as follows:

29 5-71-215. Defacing objects of public respect.

30 (a) A person commits the offense of defacing objects of public respect  
31 if he purposely:

32 (1) Defaces, mars, or otherwise damages any public monument;

33 (2) Defaces, mars, or otherwise damages a work of art on display  
34 in any public place; ~~or~~

35 (3) Defaces, mars, desecrates, or otherwise damages any place of  
36 worship, cemetery, or burial monument; or

1           (4) Removes broken or unbroken, commercial or rock grave markers  
2 for any reason, except for cleaning or repair by a family member, caretaker,  
3 or preservation organization.

4  
5           SECTION 5. Arkansas Code § 13-6-408(c), concerning desecration of  
6 burial grounds and burial furniture, is amended to read as follows:

7           (c) Exempted from this section is disturbance of human skeletal burial  
8 remains or burial furniture by landowners or agricultural tenants as a  
9 consequence of agricultural activity, or any other activity, unless the  
10 landowner or agricultural tenant willfully desecrates or knowingly allows  
11 desecration of a cemetery or burial site.

12  
13           SECTION 6. Arkansas Code § 14-14-812 is amended to read as follows:  
14 14-14-812. Cemetery access roads.

15           (a) A "cemetery", as used in this section, means any burying place  
16 for the dead, a burial plot, a graveyard, or on any land, public or private,  
17 ~~dedicated and~~ used for the interment of human remains which includes ~~at least~~  
18 ~~six (6) grave markers~~ one and (1) or more grave sites, whether marked or  
19 unmarked.

20           (b)(1) The county judges of the several county governments in Arkansas  
21 shall be authorized to improve and maintain any roads across public or  
22 private lands used or to be used for access to a cemetery.

23           (2) The cemetery access roads shall be constructed to a standard  
24 and nature to permit their use by non four wheel drive automobiles.

25  
26           SECTION 7. Arkansas Code § 18-15-302(b), concerning the power of  
27 municipal corporations to condemn land for cemeteries, is amended to read as  
28 follows:

29           (b) The order and judgment condemning a cemetery shall require the  
30 municipality, at its own expense, to remove all bodies, tombstones, and  
31 markers from the site of the original cemetery, to reinter the bodies in the  
32 new site, ~~and to properly reset the tombstones and markers in the new site~~  
33 along with the corresponding tombstones, markers, or both in the new site.

34           (1) The court ~~may~~ shall require the municipality to deposit into  
35 the registry of the court a sum found by the court to be sufficient to insure  
36 the performance of the obligation by the municipality.

1 (2) Nothing contained in this section shall prevent a surviving  
2 spouse or next of kin of a person buried in the cemetery from removing the  
3 body to another cemetery selected by him, the municipality paying the  
4 reasonable cost thereof, provided that the cost under this section, if  
5 demanded by the next of kin, shall not be less than the amount paid by the  
6 municipality for the same service when bodies are removed to a cemetery  
7 selected by the municipality.

8  
9 SECTION 8. Arkansas Code § 18-15-1408 is repealed:

10 ~~18-15-1408. Public property.~~

11 ~~(a) If a cemetery, located on land of a private landowner, has been~~  
12 ~~open to public use for a period of at least fifty (50) years, then the~~  
13 ~~cemetery shall be deemed to be public property, unless:~~

14 ~~(1) The property has been enclosed by the landowner for at least~~  
15 ~~one (1) year prior to an order of the quorum court providing for the care and~~  
16 ~~management of the cemetery as provided for under subsection (b) of this~~  
17 ~~section; or~~

18 ~~(2) The cemetery has been operated by the landowner for at least~~  
19 ~~one (1) year prior to an order of the quorum court providing for the care and~~  
20 ~~management of the cemetery as provided for under subsection (b) of this~~  
21 ~~section.~~

22 ~~(b)(1) If, upon the petition of any person, the quorum court~~  
23 ~~determines that a cemetery is public property under this section, the quorum~~  
24 ~~court may issue an order providing for the management and care of the~~  
25 ~~cemetery. The county may manage and care for the cemetery or may enter into~~  
26 ~~an agreement allowing a nonprofit association or corporation to provide for~~  
27 ~~the management and care of the cemetery.~~

28 ~~(2) Upon issuing an order for the management and care of the~~  
29 ~~public property, the quorum court shall notify the landowner of its order,~~  
30 ~~based on the quorum court's finding that the property has become public~~  
31 ~~property, and shall include a copy of the provisions of this section. The~~  
32 ~~notice shall be by certified mail.~~

33 ~~(3) No person or his or her heirs shall have, sue, or maintain~~  
34 ~~any action or suit, either in law or equity, for any cemetery lands more than~~  
35 ~~six (6) months after the person receives the notice required under this~~  
36 ~~section.~~

1       ~~(e) The rights of the public to cemetery property under this section~~  
2 ~~shall be in the nature of an adverse possession. No additional conditions for~~  
3 ~~adverse possession shall be imposed in addition to those provided by this~~  
4 ~~section.~~

5  
6               SECTION 9. Arkansas Code Title 20, Chapter 17, is amended to add  
7 an additional subchapter to read as follows:

8               20-17-1201. Findings.

9               The General Assembly finds that:

10              (1) All human burials shall be accorded respect based upon common  
11 human dignity without reference to ethnic origin, cultural background, or  
12 religious affiliation;

13              (2) The burying grounds of human remains should not be neglected to  
14 the extent that the burying grounds become nuisances, places of reproach,  
15 desolation, or crime in the community;

16              (3) Human dignity requires a degree of care for the burial grounds,  
17 cemeteries, or final resting places of our ancestors;

18              (4) In addition, certain human burial grounds are of historical or  
19 archeological significance;

20              (5) It is incumbent upon society to provide care to those burying  
21 grounds which do become neglected and abandoned;

22              (6) Town, city, county, and state officials should provide leadership  
23 in the care of neglected and abandoned cemeteries;

24              (7) Local governments should encourage cooperation among all levels of  
25 government, private citizens, private businesses, industry, foundations,  
26 organizations, and other entities to aid local governments to accomplish the  
27 task described in this section or provide manpower and skills, in lieu of  
28 funds;

29              (8) Local governments should take actions as necessary to locate,  
30 protect, preserve, and provide care for neglected and abandoned cemeteries  
31 located within their jurisdiction; and

32              (9) A cemetery should retain its status and not be used for any other  
33 purposes unless and until all human remains have been removed from the land.

34  
35              20-17-1202. Definitions.

36              As used in this subchapter:

1           (1) “Boundary marker” means any marker used for the purposes of  
 2 marking the boundaries of a cemetery, including, but not limited to:

3           (A) A tree;

4           (B) A fence post; or

5           (C) Any other type of marker that has historically marked the  
 6 boundaries of a cemetery;

7           (2)(A) “Care and maintenance” means the perpetual process of keeping a  
 8 cemetery and its lots, graves, grounds, landscaping, roads, paths, parking  
 9 lots, fences, mausoleums, vaults, crypts, utilities, and other improvements,  
 10 structures, and embellishments in a well cared for and dignified condition,  
 11 so that the cemetery does not become a nuisance or place of reproach and  
 12 desolation in the community including, but is not limited to:

13           (i) Mowing the grass at reasonable intervals;

14           (ii) Raking and cleaning the grave spaces and adjacent  
 15 areas;

16           (iii) Pruning of shrubs and trees;

17           (iv) Suppression of weeds and exotic flora; and

18           (E) Maintenance, upkeep, and repair of drains, water  
 19 lines, roads, buildings, and other improvements, including repair or  
 20 restoration of improvements necessary or desirable as a result of wear,  
 21 deterioration, accident, damage, or destruction;

22           (B) “Care and maintenance” does not include expenses for the  
 23 construction and development of new grave spaces or interment structures to  
 24 be sold to the public;

25           (3) “Cemetery” means any burying place for the dead, a burial plot, or  
 26 a graveyard located on any land, public or private, used for the interment of  
 27 human remains that includes one (1) or more grave sites, whether marked or  
 28 unmarked;

29           (4) “Cemetery name marker” means a sign whether commercial or not, no  
 30 matter how crude, used to designate a cemetery, by the name of the cemetery  
 31 or any other term that has historically identified a cemetery;

32           (5) “Grave marker” means any product used for identifying a grave site  
 33 and cemetery memorials of all types, including monuments, native field  
 34 stones, vases, or other markers;

35           (6) “Grave site” means a space of ground in a cemetery intended to be  
 36 used, or currently being used for the interment in the ground of human

1 remains; and

2 (7) "Human remains" means the bodies of deceased persons and includes  
 3 bodies in any stage of decomposition and cremated remains.

4  
 5 20-17-1203. Care and maintenance.

6 (a) Care and maintenance shall be by the surrounding landowners, the  
 7 cemetery owner, a cemetery association, a local government entity, or family  
 8 of those buried in the cemetery, including, but not limited to, a perpetual  
 9 process of upkeep of cemeteries and their lots, graves, grounds, landscaping,  
 10 roads, paths, other means of access, parking lots, fences, buildings, vaults,  
 11 and other improvements, structures, and embellishments in a well cared for  
 12 and dignified condition, so that the cemetery does not become a nuisance or  
 13 place of reproach and desolation in the community.

14 (b) The owner of a cemetery shall prevent domesticated animals from  
 15 destroying the fence or any type of grave markers.

16 (c) It is not unlawful to remove all trees from a cemetery.

17  
 18 20-17-1204. Registration - Liability - Alternatives.

19 (a) All cemetery owners shall register cemeteries and burial sites  
 20 with the county judge if the cemetery has not already been registered.

21 (b) The owner shall ensure that a cemetery has been registered or  
 22 shall be registered as soon as possible after the owner becomes aware of the  
 23 existence of the cemetery.

24 (c) Knowing failure by the owner of a cemetery to provide care and  
 25 maintenance for the cemetery is a Class A misdemeanor.

26 (d) An individual owner and the officers and directors of a corporate  
 27 owner of a cemetery shall be personally liable, jointly and severally, for  
 28 the failure to provide care and maintenance of that cemetery.

29 (e) If the landowner is the cemetery owner, the landowner may avoid  
 30 prosecution under this section by deeding the cemetery and a right-of-way for  
 31 ingress and egress to the local government so that the local government may  
 32 provide care and maintenance for the cemetery.

33 (f)(1) If a landowner finds after purchasing land that a cemetery,  
 34 burying ground, or final resting place of human remains that he or she did  
 35 not create or dedicate, and that was not disclosed in the title search and  
 36 was not otherwise made known to him or her before the purchase, shall have

1 sixty (60) days after the date of discovery of the cemetery, burying ground,  
2 or final resting place of human remains to register the cemetery with the  
3 county judge.

4 (2) The landowner shall, within six (6) months after  
5 registration, either:

6 (A) Establish a care and maintenance program for the  
7 cemetery; or

8 (B) Locate the boundaries of the cemetery and convey the  
9 cemetery to the local government.

10  
11 20-17-1205. Ingress and egress.

12 (a) The owner of a cemetery shall grant an easement or right of entry  
13 for ingress and egress for the purpose of inspection of the cemetery, at  
14 reasonable times and in a reasonable manner to determine compliance with this  
15 subchapter, to a representative designated by the:

16 (1) Town, city, or county government in which the cemetery is  
17 located;

18 (2) Sheriff in the county in which the cemetery is located; or

19 (3) Department of Health.

20 (b) Failure to provide the easement or right of entry is a Class B  
21 misdemeanor.

22  
23 20-17-1206. Local government responsibilities.

24 (a) After the effective date of this subchapter, each town, city, or  
25 county government shall identify, preserve, and protect all neglected and  
26 abandoned cemeteries within the local government's jurisdiction.

27 (b) Each town, city, or county government shall budget annually  
28 sufficient funds for the care and maintenance of all neglected and abandoned  
29 cemeteries.

30  
31 20-17-1207. Abandonment.

32 (a) Even though a cemetery that has not been maintained does lose its  
33 character and status as a cemetery, the cemetery may be declared abandoned,  
34 under this section

35 (b)(1) An application to declare a cemetery abandoned may be made to  
36 the quorum court of the county in which the cemetery is located.



1           (2) The application may be made by five (5) or more local  
2 citizens, the owner, or a cemetery preservation association after requesting  
3 assistance from the local government.

4           (3)(A) The town, city, or county government in which the  
5 cemetery is located may apply for a declaration of abandonment if the owner  
6 of the cemetery land:

7                   (i) Cannot be found or is unknown;

8                   (ii) Does not maintain the cemetery in accordance  
9 with this subchapter or has not maintained the proper records of ownership of  
10 burial rights and locations of persons buried there;

11                   (iii) Was a corporation that has been dissolved; or

12                   (iv) Has not registered the cemetery under § 20-17-  
13 1204;

14           (B) The town, city, or county government shall give notice  
15 to the owner of record and to all interested parties.

16           (d) The town, city, or county government shall be responsible, for  
17 every application regardless of the source, for the cost of the application,  
18 including the cost of any title search and a survey of the cemetery.

19           (e)(1) The quorum court shall declare the cemetery that is the subject  
20 matter of the application to be abandoned upon determining:

21                   (A) That the cemetery exists; and

22                   (B) That the cemetery has not been the subject of care and  
23 maintenance for more than one (1) year.

24           (2) The declaration shall contain:

25                   (A) A prohibition against further burials in the abandoned  
26 cemetery; and

27                   (B) Other matters that the court finds to be necessary.

28           (f)(1) Upon the recordation in the official records of the county of  
29 the quorum court’s order declaring the cemetery abandoned, the town, city, or  
30 county government named in the order, shall immediately become the owner of  
31 the cemetery with all the rights and obligations under this subchapter.

32           (2) All the assets, funds, and trust accounts related to the  
33 abandoned cemetery shall be the property of the local government.

34           (g) After the date of the order of abandonment, the town, city, or  
35 county government, shall be responsible for the care and maintenance of the  
36 cemetery.

1 (h) If the quorum court does not find the cemetery to be abandoned the  
 2 court shall enter an order denying the application.

3 (i) A cemetery may be declared an abandoned cemetery if the owner  
 4 fails to provide care and maintenance for a period of one (1) year.

5 (j) After notice to the owner by the local government or its  
 6 representative by certified letter that the cemetery does not present a well-  
 7 cared-for and dignified appearance, the owner shall have thirty (30) days to  
 8 correct the violation.

9 (2) The owner may request one (1) thirty-day extension to be  
 10 granted upon good cause shown.

11 (3)(A) If, after the thirty day period or the extended period, a  
 12 town, city, or county government determines that a cemetery has not been  
 13 maintained for one (1) year and has become a neglected cemetery, the  
 14 government shall provide for the proper and seasonable cutting of all weeds  
 15 and grass and removal of all debris and shall have unlimited access to cut  
 16 weeds and grass and remove debris.

17 (B) The town, city, or county government may bring an  
 18 action against the owner of the cemetery to recover an amount equal to the  
 19 value of the maintenance.

20  
 21 20-17-1208. Private contracts.

22 A town, city, or county government required under this subchapter to  
 23 care for a cemetery may:

24 (1) Contract with any individual, firm, corporation, or  
 25 association for the care and maintenance of the cemetery or for the opening  
 26 and closing of graves; or

27 (2) Use its own employees for the care and maintenance of the  
 28 cemetery.

29  
 30 20-17-1209. Register of cemeteries.

31 (a) The county judge's office of each county shall establish and  
 32 maintain a register of cemeteries within the county.

33 (b) The registry shall contain the physical location of each cemetery,  
 34 the name, address, and phone number of the owner of the cemetery and the  
 35 person responsible for the care and maintenance of the cemetery.

36 (c) The register may include unmarked human burials, including any

1 burial mound, earthen or shell monument containing human skeletal remains, or  
2 associated burial artifacts.

3 (d) The county judge shall investigate the information disclosed in  
4 the filing to verify or determine the proper legal description of the  
5 cemetery, and through title search, to verify the owner, global positioning  
6 land coordinates, if possible, and location directions.

7 (e) Upon receipt of registration information and verification, the  
8 county judge shall send a copy of each filing with the registry number  
9 attached to:

10 (1) The local government in which the cemetery is located; and

11 (2) The county health unit.

12 (f) The register shall be available to the public for review or  
13 copying upon request during regular business hours.

14 (g)(1) If in the course of a land survey of property located in this  
15 state, a surveyor, licensed by the State of Arkansas, locates any burial  
16 site, the surveyor shall locate the cemetery on the survey and provide an  
17 accurate legal description for that cemetery to the county judge.

18 (2) A copy of the survey shall be filed in the office of the  
19 circuit clerk and ex officio recorder of the county.

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