

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
4

As Engrossed: H3/12/03

A Bill

HOUSE BILL 2263

5 By: Representative Pace
6
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For An Act To Be Entitled

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

Subtitle

12 AN ACT TO PROTECT CEMETERIES FROM
13 DESECRATION AND DISPLACEMENT AND TO
14 PROVIDE FUNDS FOR UPKEEP OF CEMETERIES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 (3) Reasonable access to a cemetery shall not be denied.

11 (4) The landowner shall not be held liable for damages or
 12 accidents resulting from entry upon the land.

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

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

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

24
 25 SECTION 3 . Arkansas Code § 5-39-401 is amended to read as follows:

26 5-39-401. Destruction or removal.

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

29
 30 SECTION 4. Arkansas Code § 5-71-215(a), concerning defacing of objects
 31 of public respect, is amended to read as follows:

32 5-71-215. Defacing objects of public respect.

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

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

36 (2) Defaces, mars, or otherwise damages a work of art on display

1 in any public place; ~~or~~

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

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

7
8 SECTION 5. Arkansas Code § 13-6-408(c), concerning desecration of
9 burial grounds and burial furniture, is amended to read as follows:

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

15
16 SECTION 6. Arkansas Code § 14-14-812(a), concerning cemetery access
17 roads, is amended to read as follows:

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

23
24 SECTION 7. Arkansas Code § 18-15-302(b), concerning the power of
25 municipal corporations to condemn land for cemeteries, is amended to read as
26 follows:

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

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

35 (2) Nothing contained in this section shall prevent a surviving
36 spouse or next of kin of a person buried in the cemetery from removing the

1 body to another cemetery selected by him, the municipality paying the
2 reasonable cost thereof, provided that the cost under this section, if
3 demanded by the next of kin, shall not be less than the amount paid by the
4 municipality for the same service when bodies are removed to a cemetery
5 selected by the municipality.

6
7 SECTION 8. Arkansas Code Title 20, Chapter 17, is amended to add
8 an additional subchapter to read as follows:

9 20-17-1201. Findings.

10 The General Assembly finds that:

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

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

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

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

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

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

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

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

32
33 20-17-1202. Definitions.

34 As used in this subchapter:

35 (1) "Boundary marker" means any marker used for the purposes of
36 marking the boundaries of a cemetery, including, but not limited to:

- 1 (A) A tree;
2 (B) A fence post; or
3 (C) Any other type of marker that has historically marked the
4 boundaries of a cemetery;

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

- 11 (i) Mowing the grass at reasonable intervals;
12 (ii) Raking and cleaning the grave spaces and adjacent
13 areas;
14 (iii) Pruning or removal of shrubs and trees;
15 (iv) Suppression of weeds and exotic flora; and
16 (E) Maintenance, upkeep, and repair of drains, water
17 lines, roads, buildings, and other improvements, including repair or
18 restoration of improvements necessary or desirable as a result of wear,
19 deterioration, accident, damage, or destruction;

20 (B) "Care and maintenance" does not include expenses for the
21 construction and development of new grave spaces or interment structures to
22 be sold to the public;

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

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

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

33 (6) "Grave site" means a space of ground in a cemetery intended to be
34 used, or currently being used for the interment in the ground of human
35 remains; and

36 (7) "Human remains" means the bodies of deceased persons and includes

1 bodies in any stage of decomposition and cremated remains.

2
3 20-17-1203. Care and maintenance.

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

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

14
15 20-17-1204. Registration - Liability - Alternatives.

16
17 (a) If a landowner finds after purchasing land that a cemetery,
18 burying ground, or final resting place of human remains that he or she did
19 not create or dedicate, and that was not disclosed in the title search and
20 was not otherwise made known to him or her before the purchase, shall have
21 sixty (60) days after the date of discovery of the cemetery, burying ground,
22 or final resting place of human remains to register the cemetery with the
23 county judge.

24 (b) The landowner shall, within six (6) months after
25 registration, either:

26 (1) Establish a care and maintenance program for the
27 cemetery;

28 (2) Locate the boundaries of the cemetery and convey the
29 cemetery to the local government; or

30 (3) Allow care and maintenance to be provided by local
31 government or appropriate interested parties.

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33 20-17-1205. Local government responsibilities.

34 Each town, city, or county government shall consider budgeting annually
35 sufficient funds for the care and maintenance of all neglected and abandoned
36 cemeteries.

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/s/ Pace