CHAPTER 43

Cemeteries

ARTICLE 1

Removal of Abandoned Cemeteries

Editor's Note

2007 Act No. 113, Section 3, provides as follows:

"Section 27‑43‑10 through Section 27‑43‑40 of the 1976 Code are designated as Article 1 of Chapter 43, Title 27 and are entitled 'Removal of Abandoned Cemeteries', and Chapter 43 of Title 27 of the 1976 Code is reentitled 'Cemeteries'."

**SECTION 27‑43‑10.** Notice of proposed removal; due care required.

A person who owns land on which is situated an abandoned cemetery or burying ground may remove graves in the cemetery or ground to a suitable plot in another cemetery or suitable location if:

(1) It is necessary and expedient in the opinion of the governing body of the county or municipality in which the cemetery or burying ground is situated to remove the graves. The governing body shall consider objections to removal pursuant to the notice under item (2) or otherwise before it approves removal.

(2) Thirty days' notice of removal is given to the relatives of the deceased persons buried in the graves, if they are known. If no relatives are known, thirty days' notice must be published in a newspaper of general circulation in the county where the property lies. If no newspaper is published in the county, notice must be posted in three prominent places in the county, one of which must be the courthouse door.

(3) Due care is taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal.

HISTORY: 1962 Code Section 57‑421; 1960 (51) 1906; 1994 Act No. 287, Section 1.

**SECTION 27‑43‑20.** Removal to plot agreeable to governing body and relatives; determination of suitable plot in case of disagreement.

The plot to which the graves are removed shall be one which is mutually agreeable between the governing body of the county or municipality and the relatives of the deceased persons. If a suitable plot cannot be agreed upon between the parties concerned the matter shall be finally determined by a board of three members which shall be convened within fifteen days after final disagreement on the new location of the plot. The board shall be appointed as follows: One member shall be appointed by the county or municipality, one member shall be appointed by the relatives, and a third member shall be selected by the two. The decision of the board shall be final.

HISTORY: 1962 Code Section 57‑422; 1960 (51) 1906.

**SECTION 27‑43‑30.** Supervision of removal work; expenses.

All work connected with the removal of the graves shall be done under the supervision of the governing body of the county, who shall employ a funeral director licensed by this State. All expenses incurred in the operation shall be borne by the person seeking removal of the graves.

HISTORY: 1962 Code Section 57‑423; 1960 (51) 1906.

**SECTION 27‑43‑40.** Evidence of abandonment.

The conveyance of the land upon which the cemetery or burying ground is situated without reservation of the cemetery or burying ground shall be evidence of abandonment for the purposes of this chapter.

HISTORY: 1962 Code Section 57‑424; 1960 (51) 1906.

ARTICLE 3

Access to Cemeteries on Private Property

**SECTION 27‑43‑310.** Cemeteries on private property; persons entitled to access; purposes; notice; institution of proceedings in magistrate's court; immunity from civil liability.

(A) An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress and egress to the cemetery, burial ground, or grave as provided in this section by any of the following persons:

(1) family members and descendants of deceased persons buried on the private property or an agent who has the written permission of family members or descendants;

(2) a cemetery plot owner;

(3) persons lawfully participating in a burial; or

(4) a person engaging in genealogy research who has received the written permission of:

(a) family members or descendants of deceased persons buried on the private property; or

(b) the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record.

(B) The ingress and egress granted to persons specified in subsection (A) must be exercised as provided in this section and is limited to the purposes of:

(1) visiting graves;

(2) maintaining the gravesite or cemetery;

(3) lawfully burying a deceased person in a cemetery or burial plot by those granted rights of burial to that plot; or

(4) conducting genealogy research.

(C)(1) In order to exercise the ingress and egress provided in subsection (A), a person authorized by subsection (A) must give written notice to the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf of and with permission of the owner of record that:

(a) he or the person for whom he requests ingress and egress meets the statutory requirements provided in subsection (A); and

(b) he requests a written proposal designating reasonable conditions for the exercise of ingress and egress as provided in subsection (B).

(2) Within thirty days after receipt of the written notice to exercise the ingress and egress, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record must respond with a written proposal designating reasonable conditions for ingress and egress, including, but not limited to, routes to be used for access, duration of access, and time restrictions for access.

(3) The exercise of ingress and egress on the property by persons authorized in subsection (A) for the purposes specified in subsection (B) must be exercised as reasonably restricted in time and manner by the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record. The exercise of ingress and egress must not substantially and unreasonably interfere with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(4) If, thirty days after receipt of the written notice to exercise ingress and egress on the private property, written notice of reasonable conditions for the exercise of the ingress and egress as provided in subsection (B) have not been proposed or accepted, a person authorized by subsection (A) or the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner may institute a proceeding in the magistrates court of the county in which the cemetery, burial ground, or grave is located. In granting relief to either party, the magistrate may set the frequency, hours, duration, or other conditions of the ingress and egress.

(5) A magistrate may deny the exercise of ingress and egress as provided in this section if:

(a) the person seeking to exercise the ingress and egress is not authorized by subsection (A); or

(b) the magistrate is presented with credible evidence that the person authorized by subsection (A) is involved in an imminent or actual violation of state or local law while upon, or entering, or exiting the private property; or

(c) the magistrate makes a finding, based upon a showing of credible evidence, that there is no condition of entry, no matter how limited in time, manner, or otherwise restricted, that would allow the person authorized by subsection (A) to enter the private property for the purposes authorized by subsection (B) without substantially and unreasonably interfering with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(6) The provisions of this subsection do not authorize a magistrate to make determinations concerning the title of the property or establish an easement across the property.

(D) In the absence of intentional or wilful misconduct, or intentional, wilful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record is immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

(E)(1) A person exercising ingress or egress to a cemetery, burial ground, or grave under the provisions of this section is responsible for conducting himself in a manner that does not damage the private property or the cemetery, burial ground, or grave, and is liable to the owner of record for any damage caused as a result of the ingress or egress.

(2) The ingress or egress to a cemetery, burial ground, or grave on private property conferred by this section does not include the authority to operate motor vehicles on the private property unless a road or adequate right‑of‑way exists that permits access by motor vehicles and the person authorized to exercise ingress and egress by subsection (A) has been given written permission to use motor vehicles on the road or right‑of‑way.

(F)(1) The provisions of this section do not apply to any deed or other written instrument executed prior to the effective date of this section which creates or reserves a cemetery, burial ground, or grave on private property, and which specifically sets forth terms of ingress and egress.

(2) The provisions of this section in no way abrogate, affect, or encumber the title to the landowner's private property and are exercisable only for a particular private property that is subject to the provisions of this section.

HISTORY: 2007 Act No. 113, Section 1, eff June 27, 2007.