

House Bill 133

By: Representative Benton of the 31<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 44 of the Official Code of Georgia Annotated, relating to  
2 property easements, so as to provide for rights of way across private land for the purpose of  
3 access to cemetery sites; to provide definitions; to establish notice procedures; to provide for  
4 immunity from liability for landowners; to provide a cause of action; to amend Code Section  
5 36-72-4 of the Official Code of Georgia Annotated, relating to permits required for  
6 developing land on which a cemetery is located, so as to prevent certain activities on  
7 cemeteries and burial sites without a permit; to provide for related matters; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

10 Chapter 9 of Title 44 of the Official Code of Georgia Annotated, relating to property  
11 easements, is amended by adding a new article to read as follows:  
12

"ARTICLE 2A

13 44-9-30.

14 As used in this article, the term:

15 (1) 'Cemetery' means a place dedicated to and used for permanent interment or  
16 inurnment of human remains and may consist of a burial park for earth interments, a  
17 mausoleum for vault or crypt interments, a columbarium for inurnments, or other similar  
18 structures.

19 (2) 'Descendant' means a person or group of persons related to a human by blood or  
20 adoption in accordance with Title 19.

21 (3) 'Family member' means a spouse, child, sibling, parent, grandparent, or grandchild.  
22

23 44-9-31.

24 (a) Owners of private property on which a cemetery is located shall grant access to such  
 25 cemetery to:

26 (1) Any family member or descendant of any deceased person whose remains lie within  
 27 the cemetery;

28 (2) Any owner of the cemetery; or

29 (3) Any person responsible for maintenance of the cemetery.

30 (b) Access to such cemetery shall include ingress, egress, and regress, but only for the  
 31 limited purposes of maintaining the cemetery for its intended use, honoring persons buried  
 32 at the cemetery site, or conducting genealogical research.

33 (c) A landowner granting access pursuant to this article may supervise ingress and egress  
 34 across the property.

35 44-9-32.

36 (a) Any person seeking access across private land pursuant to Code Section 44-9-31 shall  
 37 provide to the landowner prior notice of intent to enter the land.

38 (b) Prior notice of intent to enter must be received by the landowner at least 14 days prior  
 39 to the proposed date of entry; provided, however, that if the landowner is a utility provider,  
 40 notice must be received at least 30 days prior to the proposed date of entry. Upon receiving  
 41 proper notice, the landowner shall allow access on the proposed date or on any other date  
 42 agreeable to both parties.

43 (c) No landowner shall be required to grant access under Code Section 44-9-31 if:

44 (1) Prior notice under this Code section is not given;

45 (2) Public access to the cemetery site is otherwise available;

46 (3) The person seeking access is able to reach the cemetery site by way of his or her own  
 47 land; or

48 (4) The requested access is unreasonable with regard to hour, duration, or manner of  
 49 travel across the land.

50 44-9-33.

51 A landowner who grants access pursuant to this article shall be immune from civil liability  
 52 for damage and injuries which may arise from such access, provided that the conduct of the  
 53 landowner does not constitute gross negligence or willful and wanton misconduct.

54 44-9-34.

55 (a) If a private landowner denies access to a cemetery in violation of this article, such  
 56 violation shall constitute a private nuisance; and any person injured thereby is authorized

57 to seek, in the superior court with proper jurisdiction, an injunction enjoining such  
 58 landowner's further violation of this article.

59 (b) An action for injunction brought pursuant to this Code section may be maintained  
 60 notwithstanding the existence of other legal remedies.

61 (c) A landowner who continues to deny access after a court has given notice to abate  
 62 pursuant to this Code section shall be guilty of a misdemeanor."

63 **SECTION 2.**

64 Code Section 36-72-4 of the Official Code of Georgia Annotated, relating to permits required  
 65 for developing land on which a cemetery is located, is amended as follows:

66 "36-72-4.

67 No owner or occupier of land shall knowingly disturb any known cemetery, burial ground,  
 68 human remains, or burial object ~~shall be knowingly disturbed by the owner or occupier of~~  
 69 ~~the land on which the cemetery or burial ground is located for the purposes of developing~~  
 70 ~~or changing the use of any part of such land by developing, allowing livestock to graze~~  
 71 upon, or similarly interfering with such cemetery, burial ground, human remains, or burial  
 72 object unless a permit is first obtained from the governing authority of the municipal  
 73 corporation or county wherein the cemetery or burial ground is located, which shall have  
 74 authority to permit such activity except as provided in Code Section 36-72-14."

75 **SECTION 3.**

76 All laws and parts of laws in conflict with this Act are repealed.