

WV State Cemetery Codes

A variety of legislation protects human burial sites in West Virginia. Protective agencies range from local sheriff's offices to county circuit courts to state government. Specific legislation follows:

WV Code §61-8-14 provides penalties for the disinterment or displacement of a dead body, and damage to cemetery or graveyard properties. Disinterment or displacement of a dead human body or parts thereof is a felony crime, and is punishable by imprisonment of not less than two or more than five years. Desecration of or damage to a cemetery, graveyard, or cemetery structure is a misdemeanor, conviction of which may result in fines of not more than \$2000, or imprisonment of not more than one year, or both.

WV Code §37-13-1 through -7 guide the removal, transfer and disposition of human remains found in gravesites on privately-owned land. The circuit court of the county in which the graves are located has jurisdiction over any proposed disturbance, provided that the graves in question are determined to have no archaeological or historical significance. Petitions must be made to and through the court system.

WV Code §37-13A-1 through -6 Access of certain persons to cemeteries and graves located on private land. For the purposes set forth in section two of this article, the state recognizes that the owners of private land on which a cemetery or graves are located have a duty to allow ingress and egress to the cemetery or graves by family members, close friends and descendants of deceased persons buried there, by any cemetery plot owner, or by any person engaging in genealogy research who has given reasonable notice to the owner of record or to the occupant of the property or to both the owner and occupant. The access route may be designated by the landowner if no traditional access route is obviously visible by a view of the property.

WV Code §16-5-21 through -22 provide guidelines for interment and disinterment. It requires that permits for such actions be obtained from the county circuit court prior to any activity unless authorized to do so by court order. Such permits are required by law to be filed by the local registrar and be open at all times to official inspection. Records must also be kept by the person or persons in charge of interment and of the cemetery or burial ground.

WV Code §29-1-8a provides protection for human burials and burial sites of historic significance, including unmarked graves, grave artifacts and grave markers. Cemeteries must have archaeological or historical importance to fall under the protection of this law. Penalties are assessed for excavating, removing or otherwise desecrating such burials without the permission of an ad hoc committee convened at need by the State Historic Preservation Office. Both misdemeanor and felony charges may result, and conviction carries fines up to \$5000 and/or prison terms.

WV Code §35-5-1 through -6 and 5A-1 through -8 regulate the governance of cemeteries, including the appointment of trustees, establishment of endowments for perpetual care, etc.

§17-22-4. General restrictions as to outdoor advertising. The following restrictions shall apply to all advertising signs, displays, and devices erected and maintained adjacent to any roads within the state road system, including federal-aid interstate and primary roads.(10) No advertising sign, display, or device shall be erected, outside of any municipality, within five hundred feet of any church, school, cemetery, public park, public reservation, public playground, or state or national forest, except markers for underground utility facilities.

§22-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable. Among other things, this code establishes a 100-foot buffer around cemeteries for coal mining operations.

§22-3-22a. Blasting restrictions; site specific blasting design requirement. Among other things, this code prohibits blasting within 100 feet of a cemetery (coal related).

§32A-1-1. Filing and registration with respect to lands prerequisite to sale, etc., within state. No person, partnership or corporation shall sell or offer for sale, in this state, any lands, situate outside this state, which are to be planted in trees or vines or divided into town or suburban lots, or any unimproved or undeveloped lands, or any lands, including cemetery lots, cemetery privileges, burial rights or privileges, the value of which materially depends on the future performance of any stipulation or promise to furnish irrigation, transportation facilities, streets, sidewalks, sewers, gas, electricity or other value enhancing utility or improvement of any undivided part or share, whether an aliquot part or a part designated on any other basis, or any mine, mineral claim, or other estate in any mine, or in the lands containing the same, regardless of where located or situated, the value of which materially depends on the future discovery or development and production of the minerals, without first having filed with the commissioner of securities (which office is established in chapter thirty-two of this code) a detailed description of the property which, or any interest or part or share of which, is proposed to be sold, and such information with respect to the value thereof, and the title to such property or properties as the commissioner of securities shall require, and without causing such property to be registered by the commissioner of securities in the manner provided for the registration of securities by qualification under section three hundred four, article three, chapter thirty-two of this code; and no person shall sell or offer any such property for sale until he has been registered as a salesman by the commissioner of securities under the provisions for registering agents contained in article two, chapter thirty-two of this code. All of the provisions contained in chapter thirty-two of this code governing the registration of securities by qualification and the registration of agents and the penalties provided therein shall apply to the registration of properties and salesmen under this article: Provided, That nothing contained in this article shall prevent any bona fide owner of any such land, mine, mining lease, mineral claim or other property, or interest therein, from selling the same on his own account and not as a part, or in furtherance, of any promotion or development to the public.

§54-1-2. Public uses for which private property may be taken or damaged. The public uses for which private property may be taken or damaged are as follows: (h) For cemeteries, and the extension and enlargement of existing cemeteries: Provided, That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the

boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;