

1 HB510
2 192894-1
3 By Representatives Hanes and Whorton (R)
4 RFD: County and Municipal Government
5 First Read: 13-MAR-18

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8 SYNOPSIS: Under existing law, the owner or possessor
9 of privately owned or leased property on which
10 cemetery, graves, or burial sites are located, is
11 required to allow reasonable access to those sites
12 or graves to family members or friends of
13 individuals buried upon, or to any person engaged
14 in genealogical, historical, or cultural research
15 on the property.

16 This bill would provide that reasonable
17 access to burial sites or graves located on
18 privately owned or leased property would be granted
19 no less than one time per month and during hours of
20 normal daylight.

21 This bill would provide that the violation
22 of a right to access graves or burial sites located
23 on privately owned or leased property would be a
24 Class C misdemeanor.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official ReCompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

11 The purpose or effect of this bill would be
12 to require a new or increased expenditure of local
13 funds within the meaning of the amendment. However,
14 the bill does not require approval of a local
15 governmental entity or enactment by a 2/3 vote to
16 become effective because it comes within one of the
17 specified exceptions contained in the amendment.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 35-1-4, Code of Alabama 1975, to
24 require an owner or possessor of privately owned or leased
25 property on which a cemetery, graves, or burial sites are
26 located to allow reasonable access to family members or
27 friends of individuals buried thereupon, or to any person

1 engaged in genealogical, historical, or cultural research on
2 the property, at least one time per month and during hours of
3 normal daylight; to provide criminal penalties for a violation
4 of the right of a person to access a cemetery, grave, or
5 burial site; and in connection therewith would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds within the meaning of Amendment 621
8 of the Constitution of Alabama of 1901, now appearing as
9 Section 111.05 of the Official Recompilation of the
10 Constitution of Alabama of 1901, as amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 35-1-4, Code of Alabama 1975, is
13 amended to read as follows:

14 "§35-1-4.

15 "(a) Owners and ~~lessees~~ possessors of private land
16 on which ~~a~~ cemetery, graves, or burial sites are located shall
17 have a duty to allow ~~ingress and egress~~ reasonable access to
18 the cemetery, graves, or burial sites by any of the following:

19 "(1) ~~family~~ Family members, and friends, ~~or~~
20 ~~descendants~~ of deceased persons buried there~~;~~.

21 "(2) ~~any~~ Any cemetery plot owner, ~~and~~.

22 "(3) ~~any~~ Any person engaged in genealogical,
23 historical, or cultural research, who has given reasonable
24 notice to the owner ~~of record~~ or ~~to the lessees, or both~~
25 possessor of the property.

26 "(b) (1) The right of ~~ingress and egress~~ access
27 granted by this section shall be reasonable and limited to the

1 purposes of visiting ~~graves or burial sites,~~ or maintaining
2 the ~~gravesite cemetery, grave, or burial site or cemetery,~~
3 burying a deceased person within a plot in the cemetery or
4 burial site, or for conducting genealogical, historical, or
5 cultural research, ~~or, in the case of a plot owner, burying a~~
6 ~~deceased person in the plot~~ on the property.

7 "(2) The owner or ~~lessee~~ possessor of the land ~~has~~
8 shall have the right to ~~designate~~ determine the frequency,
9 designated hours, and duration of the access ~~and~~ as well as
10 the access route, ~~if no traditional access route is obviously~~
11 ~~visible from a view of~~ onto the property, provided that the
12 designation is reasonable for the ~~purposes set out above~~
13 purpose of physical accessibility by persons identified under
14 subsection (a), and that access is provided to those
15 individuals no fewer than one time per month and between the
16 hours of 8 a.m. and 4 p.m., or during normal daylight hours on
17 the days in which access is permitted.

18 "(c) (1) Any person entering onto private land
19 pursuant to this section shall be responsible for conducting
20 himself or herself in a manner that does not damage the
21 private land, cemetery, gravesite, or burial site, or
22 interfere with the owner or possessor's reasonable use and
23 enjoyment of the property, and that person shall be liable to
24 the owner or ~~lessee~~ possessor of the property for any damage
25 caused ~~as the result of~~ by his or her access to the property.

26 "(2) The landowner ~~and lessee~~ or possessor, in the
27 absence of gross negligence or willful misconduct, shall be

1 immune from liability in any civil suit, action, or cause of
2 action arising out of the access granted pursuant to this
3 section.

4 "(3) When applicable, access for the purposes of
5 burial of a deceased person on the property shall be granted
6 by the owner or possessor of the property upon reasonable
7 notice to him or her and in accordance with scheduled
8 requirements for interment arranged in coordination with
9 professional mortuary entities or personnel licensed or
10 authorized to conduct such activities by the state.

11 "(d) A violation of this section by a land owner or
12 possessor is a Class C misdemeanor."

13 Section 2. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

21 Section 3. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.