COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

RYAN OFFICE BUILDING
ROOM 205

WEDNESDAY, JUNE 7, 2017
9:03 A.M.

PRESENTATION ON HB 1019 (GILLEN)
ACCESS TO CEMETERIES

BEFORE:
HONORABLE KATE HARPER, MAJORITY CHAIRMAN
HONORABLE GARY W. DAY
HONORABLE RUSS DIAMOND
HONORABLE MATTHEW D. DOWLING
HONORABLE R. LEE JAMES
HONORABLE DAVID M. MALONEY, SR.
HONORABLE THOMAS L. MEHAFFIE III
HONORABLE BRETT R. MILLER
HONORABLE JACK RADER, JR.
HONORABLE PAUL SCHEMEL
HONORABLE PARKE WENTLING
HONORABLE JEFF C. WHEELAND
HONORABLE DAVID H. ZIMMERMAN

* * * * *
Debra B. Miller
dbmreporting@msn.com
BEFORE (continued):
HONORABLE ROBERT FREEMAN, DEMOCRATIC CHAIRMAN
HONORABLE CAROL HILL-EVANS
HONORABLE SID MICHAELS KAVULICH
HONORABLE PATTY KIM
HONORABLE ANITA ASTORINO KULIK
HONORABLE PAM SNYDER
HONORABLE EMILIO A. VAZQUEZ
HONORABLE PERRY S. WARREN

ALSO IN ATTENDANCE:
HONORABLE MARK M. GILLEN

COMMITTEE STAFF PRESENT:
ROB GAERTNER
    MAJORITY EXECUTIVE DIRECTOR
THOMAS MILLER
    MAJORITY RESEARCH ANALYST
ALEX YOUNG
    MAJORITY ADMINISTRATIVE ASSISTANT

JOHN FULTON
    DEMOCRATIC EXECUTIVE DIRECTOR
BRIANNA MEDEVICH
    DEMOCRATIC RESEARCH ANALYST
## INDEX

**TESTIFIERS**

<table>
<thead>
<tr>
<th>NAME</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>REPRESENTATIVE MARK M. GILLEN</td>
<td>5</td>
</tr>
<tr>
<td>PRIME SPONSOR OF HB 1019</td>
<td></td>
</tr>
<tr>
<td>BILL MILLER</td>
<td>9; 38</td>
</tr>
<tr>
<td>STEPFATHER OF DECEASED CHILD, BERKS COUNTY</td>
<td></td>
</tr>
<tr>
<td>MARK MOHN</td>
<td>20</td>
</tr>
<tr>
<td>CHAIR, PA ASSOCIATION OF REALTORS</td>
<td></td>
</tr>
<tr>
<td>LEGISLATIVE COMMITTEE</td>
<td></td>
</tr>
<tr>
<td>REALTOR, RE/MAX OF READING, WYOMISSING</td>
<td></td>
</tr>
<tr>
<td>ARNOLD B. KOGAN, ESQ.</td>
<td>39</td>
</tr>
<tr>
<td>ATTORNEY, GOLDBERG KATZMAN, P.C.</td>
<td></td>
</tr>
<tr>
<td>PAST CHAIR, PA BAR ASSOCIATION’S SECTION OF</td>
<td></td>
</tr>
<tr>
<td>REAL PROPERTY, PROBATE, AND TRUST LAW</td>
<td></td>
</tr>
<tr>
<td>FRANK GRABOWSKI</td>
<td>49</td>
</tr>
<tr>
<td>OWNER/MANAGER, SCHUYLKILL MEMORIAL PARK,</td>
<td></td>
</tr>
<tr>
<td>SCHUYLKILL HAVEN</td>
<td></td>
</tr>
<tr>
<td>VICE PRESIDENT, PA CEMETERY, CREMATION</td>
<td></td>
</tr>
<tr>
<td>AND FUNERAL ASSOCIATION</td>
<td></td>
</tr>
<tr>
<td>JASON BENION, ESQ.</td>
<td>55</td>
</tr>
<tr>
<td>ATTORNEY, POST &amp; SCHELL, P.C.</td>
<td></td>
</tr>
<tr>
<td>COUNSEL, PA CEMETERY, CREMATION</td>
<td></td>
</tr>
<tr>
<td>AND FUNERAL ASSOCIATION</td>
<td></td>
</tr>
</tbody>
</table>

**SUBMITTED WRITTEN TESTIMONY**

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See submitted written testimony and handouts online under “Show:” at:

MAJORITY CHAIRMAN HARPER: Good morning. Welcome to the House Local Government Committee.

This is a public hearing on House Bill 1019, which is Representative Mark Gillen’s bill, and he’ll be speaking about that first.

Although not required, I think we should take the roll and move along. We do have session earlier this morning.

Alex.

(Roll was taken.)

MAJORITY CHAIRMAN HARPER: Okay? Good.

Well, the reason we called a hearing for this morning is, the bill is somewhat unusual, actually. We haven’t touched the laws relating to cemeteries in a long time, and this Committee does not usually deal with that and it’s an unusual situation.

So do you have any comments you want to make, Chairman?

MINORITY CHAIRMAN FREEMAN: No thank you, Madam Chair. I’m looking forward to the testimony.

MAJORITY CHAIRMAN HARPER: Great.
So Representative Mark Gillen, how about we bring you down here front and center and testify before the Committee.

We are recording. Everybody should be aware of that.

And the Committee has the packets, which has the information in it from each of the testifiers, if you submitted your testimony in advance, although I’m not seeing it.

REPRESENTATIVE GILLEN: Chairman Harper---

MAJORITY CHAIRMAN HARPER: Mark, would you like to bring up your other witness now, or would you like to go forward for us?

REPRESENTATIVE GILLEN: I’ll have Bill sit with me, if you’re comfortable doing that now, Bill.

Bill Miller and I have the same picture. This morning I stopped by my office and I picked the picture up off my desk, and it’s his stepson, Rickey, who passed away when he was 3 years old.

I’ll preface my remarks by saying, Mr. Miller is currently, and his wife, the mother of Rickey, barred from the cemetery with “No Trespassing” signs. They and dozens of others are not permitted to visit the graves of their loved ones.

This is a cemetery, in the way of background,
which dates from the 1840s and every conceivable war, from the War of 1812 to the Civil War to more contemporary conflicts, World War II, and we have a number of heroes that are buried in that cemetery.

There is a rope restricting access, and they have put signs up indicating that people do not have a right to visitation at the cemetery.

I believe this issue is a matter of right and wrong. I think this body has a moral imperative to step forward and peruse House Bill 1019 for the remedies that it offers.

I was at a funeral at a nearby cemetery recently. It was one of the most heart-rending moments that I have had at any funeral that I have ever attended, because the woman who passed away, Nina Pruitt, wanted to be buried next to her husband. But despite the fact that she had a receipt and she and her husband had purchased plots, which is known as the Rock Church Cemetery, and he passed away in 2002, a decorated World War II and Korean veteran, she did not get her dying wish, so she was buried at another cemetery.

They were married for over a half century. Put yourself in this situation. Between them, they had seven children, dozens of grandchildren and dozens of great-grandchildren and indeed four great-great-
grandchildren, and she did not get her dying wish to be
buried in the cemetery next to her husband, who she was
forbidden by the “No Trespassing” signs to even visit.

This piece of legislation is very simple, and I
want to commend my colleagues for coming in and hearing a
little bit more about it. And I want to acknowledge those
that submitted testimony and that will be testifying that
this bill will embody some of the principles that you have
shared in your written testimony and you’ll share in oral
testimony shortly.

This entire situation is a stench in the nostrils
of decency. It is appalling that these fine people are not
being permitted to visit the graves of their loved ones,
or to be interred next to those they intended to be buried
next to.

The resting place of the dead is hallowed ground,
whether it be Pennsylvania or any other State, and is not
subject to the laws of ordinary property.

I’m a firm believer in property rights, but the
right of exclusion ends at the cemetery gate. This bill
very simply allows ingress and egress, reasonable access
to burial plots. This bill very simply would insist, by
statute, on the honoring of prior agreements and
contract and license to access the gravesite of a loved
one.
If we cannot accomplish that -- and the good Chairlady has made every effort and gave us a vote last fall. If we cannot accomplish this in the Commonwealth of Pennsylvania, I question the validity of our existence if we cannot get this across the finish line.

Now, the Executive Director and the Chairwoman and the Minority Chair have been very open in terms of moving this bill forward. If we cannot speak lucidly on behalf of those that have passed away, if we cannot speak on behalf of the dead and the living that wish to access those burial plots, then I find this body -- that is, this institution -- culpable for that deficiency.

If statute is lacking and it’s not clear enough, then let’s make it clear. Let’s get it done. Let’s honor these people.

This is turning into a Dickens novel, and we can put the epilogue on this story so that nobody has to go through what Nina Pruitt went through, knowing that as she drew her last breath, she was not going to get her final wish to be buried next to her husband of over 50 years.

I apologize; a little long-winded, a little passionate, but if we can’t step forward and represent this type of interest. Nobody in the halls of this building is going to stop you and lobby you on this bill. I speak on behalf of those that have a limited voice and have limited
resources, that are battling the powerful on behalf of that which is morally right.

With the Chairwoman’s permission, I’ll take any questions and then turn it over to Bill.

MAJORITY CHAIRMAN HARPER: Thank you.

Maybe we should hear from Bill first.

Mr. Miller, if you have anything you want to say, just grab that mic and press the “on” button so that we can hear you.

Is it on now? Okay. Go ahead.

MR. MILLER: Well, my name is Bill Miller, and I’m here for the sole purpose of a mother’s promise to her dying child.

His name was Rickey. He couldn’t survive a third brain tumor. He started going blind. And he asked his mother, when it’s your time, will you please be buried beside me? So yeah, of course she said yes, because she knew what was happening. And then, he couldn’t see, and he just happened to look up at the corner, and he said, “Mommy, Jesus is coming for me.” Her comfort is that somebody was coming for him, to hold him, and with these people buying this cemetery, we can’t protect our promise.

Oh; private property. What a horrible thing to say when you have no feelings, you have no remorse of a child’s wish, anybody’s wish, the dead family that are
there, family that fought in wars.

Oh, we respect the veterans; that’s what they claim. We put flags up; oh, nice of you. Private property; stay out; we’ll sue you. Words that come: I’ll sue; I’ll sue. Okay. But we can’t afford to win without help. Lawyers cost money. We’re running through that now. We’re getting almost to the end, as far as our lawyer can hold out, until this law is passed or something is done.

And then I talked to people behind me. I have heard other stories of people being chased out of cemeteries at gunpoint. I’m sorry; you’d have to drop me right there. There would be my butt on that stone right there. That would be it. I wouldn’t -- why live?

I mean, I have made -- police have been called on me. We mowed this cemetery, this particular cemetery, me and my grandson. In between the time it started changing hands, we mowed it for 7 years. The new owners liked it. We were doing it for free. Then suddenly, the police are called. That’s what got me started into this.

I’m not too appreciative of somebody calling the police on me when it was fine when I was doing it for free. I was trying to teach my grandson something about respect, honoring your own dead. And we took care of the whole cemetery, for everybody there.
So this went on. The police called me a pain in the ass. That’s fine; I can be that. And then even just the Sunday before Memorial Day, we saw a policeman. They put up cameras now. So we saw a policeman sit up at the high school, which is the hill above the cemetery, and he just slowly turned around and went away, because he knew we were there.

REPRESENTATIVE GILLEN: The owners put up the cameras.

MR. MILLER: Yeah, the owners, the new owners of the cemetery, which a stickler in the back of my neck for one thing is, how can they own it?

A cemetery, when it is supposed to be State law from this State, is that when it changes hands from a church to a private individual, it’s supposed to be registered somewhere. Somebody is supposed to know about it. Sure you got to put up funds and whatever, but somebody has to be responsible, and at this point, everybody seemed to have disappeared.

Nobody upholds State law that you already have, so now you have to make new law because they got a fancy lawyer that can dig in through and shred this and shred that and all the lies that these people have told.

I have had friends that were at this auction of this particular cemetery. Everything was put out in front.
There were plots to be filled, finished. There were people that were to visit. This was an active cemetery. Oh, well, we lie; we didn’t know it was active. The stones conveyed it. It was active enough.

They couldn’t stop my wife’s aunt’s funeral in 2012, even though they tried. Of course, when you have a body there and a hole there, you got to fill it, so they couldn’t stop it. So they did for Nina. None of the cemetery, or the funeral homes in the area all pass now, so they won’t do it. So they had to bury her 5 miles away in the next town, which is a shame, and it’s also a shame to the State.

And I hear from people behind me where he told me at gunpoint. I couldn’t believe that -- at gunpoint in the State of Pennsylvania. I’m not allowed to ride around in the truck with a loaded gun. Somebody has a loaded gun pointed at me? You would’ve had to drop me right there.

But it’s just a cancer. I’m hearing other places where people are chased out of.

We had this meeting at the township building in Morgantown where people have been chased out with a shotgun or, you know. It’s like a cancer, a disease.

It’s mine; I own it. It’s mine. Why? Where’s the common decency? humanity? What if your loved ones were buried there?
I don't get -- I just don't understand how people can be so rude. I mean, I can understand if I had to cross your front yard; I had to go behind your house to find this cemetery. This is right along the public highway, as is the guy behind me. He talked to me. He said his was along the road, too. It's like, at no time do we have to cross your property until we get on a grave. What is the problem?

You can sit there and watch all you want. These people that own our cemetery now, we have been on their cell phones for years, and now they put up cameras? We have been at a township building, a public area, and they drive by with their cell phone in the car window watching us.

Some places used to call that harassment. I guess that don't matter anymore either. You call -- you know, the reason I was called the police on me the one time was, our flowers would disappear from the grave. The wife would put them on for her son's grave and her father's grave and they would disappear.

Well, after about seven times calling the police, I thought I'd -- well, we put them on earlier that day, and on my way to work, I'd stop and look. Suddenly, here comes a policeman. My flowers are gone; what are you going to do about it? Oh, well, you're a pain in my ass. Well, that
may well be; what about my flowers?

So they go over to the owner, and the owner, well, we don’t allow flowers anymore. What? News to us; you never told us that. You liked me mowing it for free for 7 years, but you never told us that.

So then miraculously, later on, the flowers start returning, because I guess they were warned by their lawyer that a few things should happen. They left the graves look ugly for quite a while, until now suddenly, within the last 3 weeks, they’re starting to attend to mowing the grass right, straightening up the headstones. So they were warned somehow to tidy it up a bit. It looks bad. It makes you look bad.

MAJORITY CHAIRMAN HARPER: Thank you, Mr. Miller.

REPRESENTATIVE GILLEN: Can I offer a word, just a clarification?

MAJORITY CHAIRMAN HARPER: Sure.

REPRESENTATIVE GILLEN: Thank you, Mr. Miller. I know how hard that was to do.

The property in question here is not an anomaly in Pennsylvania, so we don’t want to get too enthralled with the specifics of this. It’s happening in other places. When I circulated it in the House of Representatives, I contacted other State Representatives who had similar situations.
This is seven-tenths of an acre -- seven-tenths of an acre. There is no lack of clarity in terms of the transfer and the purchase as to what the current owner, who has now formed an LLC, was purchasing. So it changed hands several times. It began as a church cemetery, Rock Mennonite Church, and then it was to be called the Rock Cemetery.

So there was a transitional issue relative to the requirements that I would consider a big-box cemetery would be under in terms of perpetual care, and then the church cemetery would be under there, contrasting under State law. And then it moved into private hands. This is where we see the problem occurring, where a private individual owns this cemetery, and we’re hoping this bill will be a remedy for that problem.

Thank you, Madam Chair.

MAJORITY CHAIRMAN HARPER: Thank you.

Okay. Now we’ll take questions.

And I would like to make mention of the fact that Representative Kim and Representative Maloney have joined us.

And who else did I miss? Oh; Representative Vazquez is here as well.

Okay. So are there questions or comments from the panel?
Representative Diamond.

REPRESENTATIVE DIAMOND: Thank you, Madam Chair.

Thank you, Mr. Miller, for coming today. My heart goes out to you. And as a cosponsor of this bill, I concur with my colleague, Representative Gillen, that this gets moved, gets fast-tracked, so we can take care of this issue.

Representative Gillen, you related a story about a wife who couldn’t be buried next to her husband. Did you actually say that they had made the arrangements for her to be buried there and they had paperwork on that to begin with?

REPRESENTATIVE GILLEN: Thank you for the question.

I have a copy of the receipt. She and her husband -- her husband was buried there in 2002 -- were holders of a receipt and a plot to be buried there for a number of years.

There had not been arrangements made with the funeral home to bury her there; however, we were in contact with the funeral home, and they were not able to do that without the permission of the cemetery owners.

REPRESENTATIVE DIAMOND: Okay.

And from your point of view, before we hear from all the other testifiers, how is that skipped over when a
land transfer takes place?

    REPRESENTATIVE GILLEN: Well, it’s not a deed as such. It’s a license, relative -- and we have an attorney here who is going to speak more on the subject. It is a license, and my own belief, based on case law, would support there’s an implied access to that particular site. So they don’t actually own the land, but you may ingress and egress, as you would in any other cemetery plot.

    My good friend, who will be testifying, is going to indicate that he believes this House Bill will be curative in terms of some of the lack of clarity in statute in Pennsylvania law.

    But Pennsylvania case law, if you go back to Brown, I believe v. Lutheran Church in 1854, clearly assents to the right to access a cemetery, and that common law dates back for centuries.

    It’s unfortunate that we’re having this situation today with perhaps a slightly different moral code in the 21st century. There had been very little debate up until this point in time as to the rights of those that had family members in the cemetery to visit, to gain reasonable access to the cemetery. Now we’re going to have to put it in print.

    REPRESENTATIVE DIAMOND: Okay. Thank you so much.
Thank you, Madam Chair.

MAJORITY CHAIRMAN HARPER: Thank you.

Representative Zimmerman.

REPRESENTATIVE ZIMMERMAN: Thanks, Madam Chair.

Did I understand that this was actually sold at public auction?

REPRESENTATIVE GILLEN: Most recently it was purchased at public auction, that’s correct, in 2010.

REPRESENTATIVE ZIMMERMAN: So do we know what the intent of the buyers were? If it’s not, you know, if they’re no longer allowing people to---

REPRESENTATIVE GILLEN: I think it’s a natural question, but it’s beyond the purview of this bill or our discussion here today whatever their intent would happen to be.

Just a little background on that seven-tenths of an acre. There is a building, and it had been rented out by prior owners in the past, if I’m not mistaken, Bill? It fronts a country road, and I’m not going to speculate on what they might want to do with the building. Their history in purchasing property in the area is they buy things and they leave them wilt on the vine.

REPRESENTATIVE ZIMMERMAN: Okay. Thank you.

MAJORITY CHAIRMAN HARPER: Okay.

I would like to point out that Representative
Kulik, Representative Day, and Representative Evans have all joined us.

And we have a question from Representative Miller.

REPRESENTATIVE MILLER: Thank you, Madam Chair.

Thank you, Representative Gillen, and thank you, Mr. Miller, for your testimony, both your stories here.

I also, like Representative Diamond, am a cosponsor of this and think this is what we should be doing.

A question for you: Do you have any estimate about how many types of cemeteries that this would apply to across the Commonwealth that there are? Any estimate of that number?

REPRESENTATIVE GILLEN: The Cemetery Association is going to be testifying, and they have 450 member cemeteries. I think they probably have more of a canvas to paint on this than I do.

Though in the course of my desk-to-desk intersection with my colleagues in the House, I ran into three or four Members who said, I have a similar situation going on, and we ran into one in the Senate. I had a meeting in the Senate yesterday.

Clearly, the environment is ripe for more of it happening based on what we think is some stiffening up of
Pennsylvania law that is necessary.

REPRESENTATIVE MILLER: Thank you.

MAJORITY CHAIRMAN HARPER: Anybody else?

Thank you very much. You can take a seat and listen to the rest of the testimony.

And next up, we have Mark Mohn from the Realtors.

Is he here? Yes. Thank you. Thank you for coming.

I think the Committee Members can follow along.

We should have your testimony in our packets, but the rest of the audience may not.

MR. MOHN: Sure.

MAJORITY CHAIRMAN HARPER: So please feel free to go ahead when you’re ready.

MR. MOHN: Good morning, Chair Harper, Chair Freeman, and Members of the House Local Government Committee. Thank you for the opportunity to speak about House Bill 1019 today.

My name is Mark Mohn. I currently serve as the Chair of the Pennsylvania Association of Realtors Legislative Committee. I am a practicing realtor with RE/MAX of Reading in Wyomissing.

I’m here today on behalf of the 30,000 members of the Pennsylvania Association of Realtors. We would like to offer some recommendations on House Bill 1019 introduced by Representative Gillen.
The transfer of private property can be challenging. Those challenges are made even greater when there are unique circumstances affecting both the previous owners and the new property owners. And as such, Realtors understands the importance of thoroughly researching the current status of a property prior to any transaction.

The Pennsylvania Association of Realtors empathizes with families who wish to pay respect to loved ones and understand this may be impossible when an owner denies access to the gravesite. However, we also respect the fact that the property is owned privately and support the rights of the owner to limit access to the property.

We have no desire whatsoever to add to the burden of bereaved families. The Association believes that requiring the disclosure of cemeteries on private residential properties will not have the outcome that the State Legislature and that the families would prefer. The Seller Disclosure Law is designed to reveal material defects with the property, not necessarily make known unique characteristics of the property.

Pennsylvania has a long history of multigenerational family-owned properties. As property is transferred from generation to generation, information about that property may be lost or forgotten. In those
instances, requiring disclosure on the seller’s disclosure form would not achieve the desired outcome.

Through no fault of their own, many current property owners are unaware of the location and condition of burial plots on large tracts of family-owned property. As a result, this information would not be disclosed to the next property owner.

After reviewing and discussing the proposed legislation, the Pennsylvania Association of Realtors would like to make the following recommendations:

- The Association recommends that the bill be amended to require that burial plots in private cemeteries be subject to easements and/or deed restrictions. By permanently adding an easement onto the title of the property, it would ensure the desired outcome. The easement or deed restriction would provide the family access to this portion of the property and, more importantly, would be discoverable on a title search, thereby notifying potential buyers of the existence of the burial plots and the owner’s responsibility. Any undisclosed deed restriction or easement would be uncovered through a title search without amending the Seller Disclosure Law. This would be beneficial when the property is transferred
in the future and provide a searchable record of the location of the burial plot.

- Additionally, the Association recommends removing any reference to a commercial disclosure law, as that does not exist. An easement and deed restriction would be applicable to commercial transactions as well.

Thank you again for the opportunity to discuss this legislation. We look forward to working with you on amendments to strengthen the legislation and to strike a balance between the bereaved families and private property owners in Pennsylvania.

Thank you.

MAJORITY CHAIRMAN HARPER: Thanks.

I’ll lead off the questions, if you don’t mind, with one of my own.

MR. MOHN: Absolutely.

MAJORITY CHAIRMAN HARPER: I think an easement is a really great idea, and a deed restriction, I agree with you a title company would pick that up.

MR. MOHN: Mm-hmm.

MAJORITY CHAIRMAN HARPER: Who would you propose to do that? Because, and I’m sure this is also true in your area, Pennsylvania has been around for 300 years or
more, and there are an awful lot of family plots here and there.

Most of the time, the succeeding property owners respect them, know they’re there. They might have a little wall around them or some grave markers or something like that. But who would put the easement or deed restriction on, and what would be the incentive to make somebody do that?

MR. MOHN: Well, that’s a great question, and unfortunately, the details of that process we really haven’t gotten into.

The challenge that we had when discussing the bill is basically that, you know, simply requiring a seller’s disclosure, disclosure questions are basically, “are you aware of” or “are you not aware of.”

MAJORITY CHAIRMAN HARPER: Right.

MR. MOHN: So proving whether somebody is aware of the location and condition of burial plots that may be in the back corner of a property, you know, it’s hard to determine how verifiable that information is from generation to generation, whereas a permanent easement, you know, that transcends time. There is not going to be a reliance on a seller’s disclosure form which is open to that person’s knowledge, that person’s ability to recall whether or not there is that information there.
So the details of how to get those easements and deed restrictions on current properties is a large hurdle that we’re well aware of.

MAJORITY CHAIRMAN HARPER: Right.

MR. MOHN: There is going to be significant work put into that. However, we believe that is the best possible way to achieve the desired outcome to ensure that families like the Millers are going to be able to have perpetual access to those properties through someone else’s private property.

MAJORITY CHAIRMAN HARPER: Okay.

On the seller’s disclosure form, which I agree with you only applies to residential properties, although we could, it seems to me, as a matter of statute require that commercial property owners disclose the existence of something like a private burial ground. I think we can do that. I mean, we require disclosure of other things in certain ways.

But I guess my question to you is, isn’t it better for Realtors if the seller’s disclosure requires it?

MR. MOHN: Well, we won’t have an issue with having the sellers disclose any known---

MAJORITY CHAIRMAN HARPER: Of which they are aware.

MR. MOHN: That’s correct.
MAJORITY CHAIRMAN HARPER: It depends on how you write it. But right, true, that’s what most of them say.

MR. MOHN: Now, we consistently recommend to our clients, our selling clients, disclosure is their friend.

MAJORITY CHAIRMAN HARPER: Right.

MR. MOHN: The more that they can disclose to potential buyers, the better off everyone is in the transaction.

The challenge---

MAJORITY CHAIRMAN HARPER: I’m a lawyer. It stops litigation later---

MR. MOHN: Absolutely.

MAJORITY CHAIRMAN HARPER: ---if they know about it before. Right.

MR. MOHN: The challenge comes when perhaps that person is not, you know, is not aware, and how do you prove whether they are aware or not?

In this particular instance, now certainly it’s obvious that the property owners are aware that there’s a cemetery on their property. But there are many other instances where there are burial plots that are not marked by walls, not readily accessible to a country lane, and those would be discernible through the deed restrictions and easements.

MAJORITY CHAIRMAN HARPER: Right.
No, I agree with that, but I just want to point out that the bill itself says “if known” the location of a burial site.

MR. MOHN: Right.

MAJORITY CHAIRMAN HARPER: So if there were a property disclosure, it would be like the other property disclosures, where if you know that the basement floods or something like that—

MR. MOHN: Sure.

MAJORITY CHAIRMAN HARPER: ---you have got to report it.

MR. MOHN: Sure.

MAJORITY CHAIRMAN HARPER: Okay. Thanks.

Chairman Freeman.

MINORITY CHAIRMAN FREEMAN: Thank you, Madam Chair.

Thank you for your testimony.

I’m still a bit confused as to who you are proposing is trying or who would be responsible for obtaining the deed restriction or the easement.

MR. MOHN: Well, and again, that’s going to be determinable through the statute as to how that process would work.

We don’t have the details on how to make that outcome achieved. We just know or we just firmly believe
that that is the best way to ensure that this issue is not

going to be ongoing beyond this point in time.

We want to see the desired outcome come to

fruition, that bereaving families have that ability to

access those burial plots, whether it’s this generation or

five generations from now.

MINORITY CHAIRMAN FREEMAN: Well, that touches on

another issue, too.

I mean, it strikes me that you have already

purchased the plot.

MR. MOHN: Mm-hmm.

MINORITY CHAIRMAN FREEMAN: That transaction took

place a long time ago.

MR. MOHN: Sure.

MINORITY CHAIRMAN FREEMAN: That’s an obligation

contractually. Now, under your proposal, are you laying

out the possibility that the family that owns the plot has

to go after getting the easement or getting the deed

restriction?

MR. MOHN: Again, we did not discuss any of that

information. It is simply stating the best outcome that we

can foresee is whatever party is required to obtain that

deed restriction and/or easement, however that process

occurs, that’s the best way to make sure that this is a

perpetual bill in your legal law.
MINORITY CHAIRMAN FREEMAN: I understand your legal standpoint as far as having that sort of solidified, but I think it’s an undue burden if we ask the family to go and proceed to get a deed restriction on someone else’s property or to get an easement when the bottom line is, they already purchased the plot. That is their property, in essence, through that purchase process.

MR. MOHN: Well, and again to that, in effect, then, if you’re looking at a property, they have the plot in the cemetery, but where is the documentation that they have access through the rest of the private property to get to that plot, and that’s the concern we’re looking to overcome.

MINORITY CHAIRMAN FREEMAN: Well, we already provide under real estate law that if you have a flag lot, you have to have access to that plot or to that piece of land. You can’t own a piece of land that has no access to a public road. The owner of the surrounding land has to give you the ability to access your property, even though it might be surrounded by someone else’s property.

MR. MOHN: Okay.

MINORITY CHAIRMAN FREEMAN: That’s an established principle.

MR. MOHN: Okay. Then is that an easement or is that -- because that sort of access then needs to be
documented so that there aren’t issues of providing access
to those sorts of plots.

MINORITY CHAIRMAN FREEMAN: I see where you’re coming from from a legal standpoint, but I really think it’s an undue burden on the families that are just simply trying to access the family plots.

MR. MOHN: Sure.

MINORITY CHAIRMAN FREEMAN: And I think---

MAJORITY CHAIRMAN HARPER: We do have a lawyer coming up, a couple of them.

MINORITY CHAIRMAN FREEMAN: To speak.

MAJORITY CHAIRMAN HARPER: Hopefully.

MR. MOHN: Just to clarify that, that’s outside my purview.

MINORITY CHAIRMAN FREEMAN: But I do think having the disclosure in the purchase is probably the best way of ensuring that everyone knows what is on the property.

I can’t imagine anyone buying a property and not recognizing that there is a cemetery there, even if it’s rather obscure, even if it’s rather old.

MR. MOHN: Mm-hmm.

MINORITY CHAIRMAN FREEMAN: Hopefully before you purchase a piece of property, you surveyed the land and you see what’s there.
MR. MOHN: Again, that’s the likelihood in most cases. Given the fact that we have cemeteries that date back prior to the 1700s in this State---

MINORITY CHAIRMAN FREEMAN: Mm-hmm.

MR. MOHN: ---there are possibilities that there are cemeteries that are in existence, transferred on large tracts of land, that are buried deep in woods that people are not aware of that they are there.

MINORITY CHAIRMAN FREEMAN: I guess I would contend that’s rather obscure compared to the situation we have before us today.

MR. MOHN: And again, I just want to make it clear that the Pennsylvania Association of Realtors is not opposed to allowing bereaved families to have access to their cemetery plots.

MINORITY CHAIRMAN FREEMAN: No; I understand. I understand.

MR. MOHN: You know, we are very supportive of that. We just want to make sure it’s the cleanest, easiest possible way to do so, and that we have some concerns that adding to -- that requiring it solely on the seller’s disclosure may not achieve the full desired outcome.

MINORITY CHAIRMAN FREEMAN: Okay. Thank you for your testimony.

MR. MOHN: You’re welcome.
MAJORITY CHAIRMAN HARPER: Representative Diamond.

REPRESENTATIVE DIAMOND: Thank you, Madam Chair.

And I’ll give you a disclosure here: I have no idea about real estate law. I’m not a realtor, although I bought and sold property, but I have seen the stack of papers I have to sign when I do that.

MR. MOHN: Right.

REPRESENTATIVE DIAMOND: So I want to go back to both Chairmen’s comments about the easement or restriction. Somebody is going to have to pay for that. I imagine it costs something. Are they going to have to hire an engineer to come out or a surveyor to come out and actually, you know, stake this out or---?

What’s the cost? I mean, when we’re talking about undue burden, what exactly would be the cost of having an easement or a deed restriction filed? Because when we’re thinking about burdening someone with that obligation, we need to know how much of a burden that’s going to be.

MR. MOHN: Sure.

And the challenge is, the best possible answer that can be given to you is, it depends. It depends on the circumstances; the location of the cemetery; how far into the property the said cemetery is; what the size of the
cemetery is. All those factors go into it.

You know, if you’re providing access to a flag lot or to a landlocked piece of land that somebody has bought as hunting property and then you’re providing access to that through an easement, again, all the costs just depend on the specific details of that property and the adjacent property.

REPRESENTATIVE DIAMOND: Well, would it be safe to say this is in the hundreds to thousands of dollars range?

MR. MOHN: Again, I can’t go through the specific numbers of it, but, you know, I would certainly expect so.

REPRESENTATIVE DIAMOND: Okay. Thank you.

MAJORITY CHAIRMAN HARPER: Representative Maloney.

REPRESENTATIVE MALONEY: Thank you, Madam Chair.

There is interesting discussion here, and I believe that the Chairman brought up a point of concern that I saw with respect to landlocked land. And I think, Mark -- thanks for being here -- that you just mentioned that, with respect to the fact that somebody has to be able to access a landlocked piece of property. So to the point of it could be deep into the woods, to use your analogy, I
guess is some of the agreement that has to be made.

But I’m going to go to a practical sense here where I would like to paint a picture of, how do we practically and what would be your opinion -- and maybe the attorney that’s coming up might want to be prepared for this in this respect. But I actually have a private, if you want to call it a private cemetery adjacent to my property at home that goes back to the original farmstead from William Penn, who the Weller family kind of settled there. And I understand there was an X-ray of the property and that there are three bodies in the ground. I didn’t see those facts, but that’s what I understand.

There is a monument there, so I guess one of my questions is, I just had the property surveyed a couple years ago, and it is clearly up against the corner of my property, but it’s really not identified with a deed. So one of my questions was, when I had it surveyed is, do I assume that property? Is that on my land?

And so my question on a practical sense would be, if a person was to say, hey, look, that little fence that’s around there and dilapidated and it’s 100 years old and metal, I’m going to tear that down and I’m going to remove the monument and I’m going to plow that field. Is there something that would stop me from doing that?

MR. MOHN: Well, that goes into some of the
cemetery laws that the Chair was speaking about that have not been reviewed for many times before the Legislature.

And again, this issue that Representative Gillen has brought forth speaks to the fact that more review of the current statute needs to take place in these matters to have a better understanding of just those sorts of circumstances.

So I can’t speak to the specifics of that sort of thing. That would be determined by what statute currently allows.

REPRESENTATIVE MALONEY: So to the point of, I believe, Mr. Miller who was here that maintained a piece of property for so long, is there a troubling fact that he has invested a certain amount of maintenance to that property that now becomes a question of almost who is responsible for maintaining this property, and was there value that he had invested there?

MR. MOHN: Yeah. Those, unfortunately, sound to me like legal questions that I unfortunately cannot answer because I don’t have that expertise.

REPRESENTATIVE MALONEY: All right.

Thank you, Madam Chair.

REPRESENTATIVE GILLEN: Madam Chairman, with your permission, it sounds like what is being referred---

MAJORITY CHAIRMAN HARPER: Sure. Briefly.
REPRESENTATIVE GILLEN: ---referred to is a historic burial place. The cemetery is over 100 years old. There hasn’t been burials for 50 years. I would just suggest you purview a different section of the law.

Thank you.

MAJORITY CHAIRMAN HARPER: Are you saying that your bill would not apply to a cemetery that old?

REPRESENTATIVE GILLEN: No; in fact it would, but the standards are slightly different in terms of the law.

REPRESENTATIVE MALONEY: But just for clarification with something that was said earlier, does that mean that a specific parcel of land has to have been identified, certified, and registered for that to have validity?

MAJORITY CHAIRMAN HARPER: No. I mean, that is the witness’s point. The witness’s point is, if there were an easement or some other covenant running with the land that could be recorded at the courthouse, everybody would know it.

REPRESENTATIVE MALONEY: Correct. But if there wasn’t---

MAJORITY CHAIRMAN HARPER: Unfortunately, we seem to have dozens, if not hundreds of family burial plots or other privately owned or perhaps owned by a church at one
point---

MR. MOHN: Sure.

 REPRESENTATIVE MALONEY: Yeah.

MAJORITY CHAIRMAN HARPER: ---that are no longer active that way.

MR. MOHN: Yeah.

MAJORITY CHAIRMAN HARPER: So the gentleman is correct. If it had an easement on it or some other deed restriction, we’d all know it. The question I had for him was, whose obligation would it be to put it on?

MR. MOHN: Absolutely.

MAJORITY CHAIRMAN HARPER: And that goes back to Representative Diamond’s question, who would pay for it, you know?

All right. Other questions of this witness, because we do have a number of others, including lawyers and things like that, so.

Thank you very much.

MR. MOHN: Thank you very much.

MAJORITY CHAIRMAN HARPER: We appreciate your coming.

MR. MOHN: Yep.

MAJORITY CHAIRMAN HARPER: Do you want to stay and we’ll give you the last word at the end, Mr. Miller?
MR. MILLER: I just have one particular point.

MR. MILLER: Just one point.

MAJORITY CHAIRMAN HARPER: Okay. Go ahead. Come on up and give us your particular point.

MAJORITY CHAIRMAN HARPER: Right.

MR. MILLER: What Mr. Maloney talked about is if it was never registered.

In our particular cemetery, there are several graves that were registered by several other families. We were never told we needed to.

MAJORITY CHAIRMAN HARPER: Right.

MR. MILLER: But back in the early 1870s, ’80s, some of these other people were, you know, well to do and their family ran the local stone quarry, so they did register at the courthouse.

So there are some cemetery plots here that are registered, so anybody could have looked if they chose to. But---

MAJORITY CHAIRMAN HARPER: Okay. So the point you’re making, which is also a very good one: We could have private cemeteries where some of the property owners have deeds and some do not.

MR. MILLER: Well, the word “deed,” they never had them. They’re registered with the courthouse---

MAJORITY CHAIRMAN HARPER: No. And a cemetery plot is not registered the same way a fee simple deed is.
MR. MILLER: Yeah. They’re registered with the courthouse, because back then they did gentleman’s agreements and things were different then.

MAJORITY CHAIRMAN HARPER: And there were gentlemen then. But anyway---

Thank you very much. I’m kidding, of course.

There are gentlemen now.

Can we have Arnold Kogan, please?

We had reached out to the Pennsylvania Bar Association, which did not have time to opine, and we understand that.

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: But we reached out to the Bar Association, recognizing that there are many legal issues and real estate issues involving this.

If that light is green---

MR. KOGAN: Yeah. Does that mean it’s on?

MAJORITY CHAIRMAN HARPER: You’re ready to go; right.

MR. KOGAN: Great.

MAJORITY CHAIRMAN HARPER: So Mr. Kogan, I appreciate your coming today and testifying before the Committee.

MR. KOGAN: Thank you.

Good morning, Chairperson Harper, Chairperson
Freeman, and Members of the Committee.

My name is Arnold B. Kogan. I am an attorney with the Harrisburg firm of Goldberg Katzman and a past Chair of the Pennsylvania Bar Association’s Section of Real Property, Probate, and Trust Law. The views I present today are my own, as the Pennsylvania Bar Association, as Chairman Harper has pointed out, has not taken a position on this bill. It takes us time, too, to act on various proposals.

In preparation, however, I did look at the bill and news articles that Representative Gillen’s office had sent me applicable to the Pennsylvania statutes and reported cases. And I also looked at some of the other States, not, you know, a full survey, but some of it is cited as footnotes for your staff to look at if they need to follow up on some of these things.

Generally, as has been discussed here, the right to use a burial plot is considered real property interest but is in the form of a license or easement rather than in the form of a deed. This license often gives a person, the holder, to bury oneself or another in the site and by implication comes their right of access rather than a specific statement.

Now, there are some that, you know, whether it’s maybe large or there’s a mausoleum, where they do get very
specific as to the rights of access. And then you get to
the broader rights of landlocked properties, which
obviously the owner of the cemetery or the seller can’t
guarantee around the area unless there is some law or
something that forces the surrounding property to grant
that access.

Let’s see.

Although the license for the burial plot is not
recorded in the recorder of deeds, the cemetery company is
required to keep records on the burial site and to whom the
licenses were issued and used. Here, of course, the
problem is, we have private sites that are not cemetery
companies.

And quite candidly, my comment was focused on
what is obvious, that a regular cemetery has those kinds of
records. They can be lost. But you get into the more
difficult ones, and I was thinking of the technology, you
know, with the GPS and the phones. You may be able to
identify a location much easier than you would have under
our old, you know, where we had to deal with, you know,
hand surveys. So there may be a way for technology in
there.

And I could, maybe if you are interested in
proceeding, I have colleagues in the GPS community that
might be willing to give a little bit of time, not a whole
lot, but, you know, for possible technology solutions to that identification problem. Not necessarily leaps and bounds, but at least, you know, what we call the centroid or the center of attention where the gravesites are. So there might be a solution on that. I do think, though, that the recording is something that ought to be pursued.

Now, who to do it, obviously it has to be the owner of the property initially to record, because that’s the one who is granting the easement. So you can’t force the recipient. They can be sure that when they get it, you know, the burial right, that something is recorded.

Now, it wouldn’t be on each individual one, because then I think you get into a real burden. But the fact that there is, you know, for each individual gravesite. But there should be something with respect to, in general, that, you know, here’s the location from a GPS-coordinate point of view and that there is something on that property; on the parcel, you know, on the deed.

So I have just another minor thing, but it’s now being more evident to me that it’s worth doing, because there was talk of other statutes that we have. You may want to consolidate everything under the Consolidated Statutes, and I think there’s a benefit to that. Maybe you don’t have time now because you’re trying to get this bill through, but that’s something you ought to look at on
Title 9, because we have half in the Unconsolidated area and half in the Consolidated area, and it would be easier for everybody, especially if you have attorneys that are knowledgeable in this area.

And I wasn’t that knowledgeable when I started this to realize that there are two different groups, and I looked at both of them. Now, you know, some of it deals with the abandonment, you know, the re-interment and things like that. It might be better to put them all together.

And I noticed this bill is broad on the visitation. Now, I support that, but I just wanted to point out to the Committee some of the other States. Virginia is listed mainly because some of the leading commentators say that’s one of the more detailed statutes. And I’m not saying that’s better than what you drafted, but---

MAJORITY CHAIRMAN HARPER: Well, we’re going to pull it and take a look just to see.

MR. KOGAN: Yeah.

But, you know, the sites in two is where it was identified to me, in my footnote in two, those two articles, that that was the more detailed one. And on case law, I guess Texas had the more detail.

Texas’s statute, though, is pretty close to you.
You know, it was in ’93. That’s pretty close to what you have, a very broad right of visitation, which I think is more realistic.

You can’t have, you know, owners going into who -- I mean, when it’s burial, that’s a different story, but -- you know, for proof. But when it’s actual visitation, I think your bill’s language is much better than getting down to all these details of who might have a right to come onto the property. Unless it gets abusive; then you may have to change the law, you know, get to a more restrictive viewpoint.

And the other area that I thought was -- and maybe this is the best you can do right now as you say with respect to residential property. I gave you an example because it was close by. I grew up near the cemetery that I cited in the footnote. That’s why it just stuck in my mind, where they sliced off a part of it, and are they on the site or not? You may want to clarify some of your language, because it’s a little bit more restrictive.

And I understand you don’t want somebody, you know, where someone lives there, you don’t want to have a lot of intrusion onto their site. They want to be able to control it. But as to what is on the site and what isn’t, you may want to think about how you want to define that.

And that’s basically, and, you know, finally, we
know that as mentioned here, even more detail because of what the Representative did in checking with his colleagues. I just picked up a couple of cases, you know, that are in litigation now, one in Federal court over, you know, these kinds of issues.

So it is certainly something that’s going to get more prevalent over the years. And you have an outflow of people, so some cemeteries, you know, lose -- you know, the millennials are moving out and so there are a lot of issues, that now is the time to deal with this. It’s good timing to try to wrestle with these issues.

And that’s all I have.

MAJORITY CHAIRMAN HARPER: Thank you very much.

I’ll start off.

I think the idea of a deed or an easement that was raised by the Realtors may only be possible if we required people who sold plots---

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: ---to record a deed saying that human people are buried here, okay?

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: Because then they would, you know, if they’re selling plots---

MR. KOGAN: Right.
MAJORITY CHAIRMAN HARPER: But most of those people, property owners, are probably churches.

MR. KOGAN: Mm-hmm.

MAJORITY CHAIRMAN HARPER: So we’re going to have to burden them with that. But that doesn’t solve the problem in which we find ourselves.

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: Which is where it wasn’t done by whoever sold the plot, and now we have a situation where the law is ambiguous.

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: Right? So I appreciate the research, and we are going to pull the Virginia statute and see if that has anything that we can borrow.

MR. KOGAN: Right.

MAJORITY CHAIRMAN HARPER: So I think that’s a good idea.

And I still think the easement is a good idea. I just don’t think it’s practical in these places where you buy a piece of ground that actually was first plotted out in William Penn’s time and it happens to have somebody buried on it. That’s just -- that’s actually normal in Pennsylvania, I think. So that makes it a little more difficult.
But I think we should look into the possibility of requiring people who sell burial plots to record some kind of a deed restriction saying they have done so. So that’s a good idea.

MR. KOGAN: Mm-hmm.

MAJORITY CHAIRMAN HARPER: Any other questions for this witness?

And I do want to point out that several people have come and left, that 10 o’clock is a very popular time for committee meetings that are voting meetings. So several Members have left to go to voting meetings of other committees.

However, Representative James came, so that’s always a good thing.

Representative Gillen, do you have a question?

REPRESENTATIVE GILLEN: Thank you, Madam Chairman. Very briefly.

Thank you very much for testifying.

I see you footnoted Brown v. Lutheran Church as well.

MR. KOGAN: Yeah.

REPRESENTATIVE GILLEN: And in your testimony you indicated by “implication” rather than “specific” statements in the law.

MR. KOGAN: Right.
REPRESENTATIVE GILLEN: There is an implied access that exists historically under case law in Pennsylvania. Is that a fairly quantifiable position?

MR. KOGAN: Well, I think it’s -- there was some, in older cases, some in passing, they recognized the right of access. But I don’t think it was as explicit in the cases, the holdings. What the Lutheran case did was really describe in that one paragraph the type, you know, that it was.

You know, I was citing it for the purpose that it was a license, you know, as opposed to -- and they even said that we don’t care even if it’s in a deed; it doesn’t rise to a fee simple or, you know, the same as a normal deed if transferring property. They don’t get the title.

So Pennsylvania just is weak, and that’s why the bill is, you know.

REPRESENTATIVE GILLEN: Very simply -- thank you very much for your testimony.

MR. KOGAN: Yeah.

REPRESENTATIVE GILLEN: Very simply, and perhaps even in a “yes” or “no”---

MR. KOGAN: Right.

REPRESENTATIVE GILLEN: ---is House Bill 1019 curative relative to the issue of access?

MR. KOGAN: Yeah. I think it improves it
considerably.

REPRESENTATIVE GILLEN: Thank you, Madam Chair.

MAJORITY CHAIRMAN HARPER: Thanks. Good question, good answer. Thank you very much.

Anybody else? Questions for this witness?

Thank you for coming---

MR. KOGAN: Sure.

MAJORITY CHAIRMAN HARPER: ---and thank you for taking the time to research the law for us. We appreciate that.

I would also like to next invite up, we have a panel from the Pennsylvania Cemetery, Burial and Funeral Association. If you could all come up, and we need a few more chairs, Alex, for our friends here.

How many -- we have three testifiers? Okay; we have enough.

Make sure you use the mic, because we are recording and it’s much easier when you use the mic.

Can I ask you first to introduce the panel, somebody, and then we’ll take it in whatever order you would like to present your testimony.

MR. GRABOWSKI: Good morning, Madam Chair and Members of the Committee.

My name is Frank Grabowski. I am the owner and manager of Schuylkill Memorial Park in Schuylkill Haven,
and also the Vice President of the Pennsylvania Cemetery, Cremation and Funeral Association.  

With me today, from my right, is Harry Neel, who is the President of Jefferson Memorial Cemetery, Funeral Home and Crematory in Pittsburgh, and to my left is Jason Benion, who is an attorney with the law firm of Post & Schell and who is also the Association’s counsel.  

MAJORITY CHAIRMAN HARPER: Great. Thank you very much. Go ahead.

MR. GRABOWSKI: Okay.  

We thank you for the opportunity to be here today to express our support for House Bill 1019.  

Our membership includes about 450 cemeteries across Pennsylvania. Our organization was established 85 years ago to provide leadership in setting and maintaining the highest ethical standards in the death-care industry. We believe that House Bill 1019 helps to achieve that goal.  

When consumers purchase the right of interment in a cemetery, they deserve to know that that right will be honored when they die, even if the cemetery is later transferred to a new owner. This legislation gives consumers confidence that their wishes will be followed at death by requiring the new owner to honor purchases of burial plots made before the transfer of ownership.
But the right to be buried in a cemetery loses a lot of its value if no one can visit your grave. 

House Bill 1019 gives consumers and their next of kin peace of mind by requiring cemeteries to grant reasonable access to burial plots for the purpose of visitation. This is something that nearly all cemeteries in Pennsylvania are already doing, with a very small number of unfortunate exceptions.

We believe that by providing for reasonable visitation rights, the bill strikes an appropriate balance between ensuring the next of kin can mourn and remember their loved ones and maintaining the dignity and safety of the cemetery.

Importantly, the protections found in House Bill 1019 are not new. The bill simply codifies rights that have been recognized in Pennsylvania law for a century or more.

We would like to propose one minor technical change to the bill. In Section 1, the bill uses the word “guaranteed” in defining the term “burial plot.” That word is a term of art that has a particular meaning in the industry. A “guaranteed contract” is one where the price is guaranteed not to change between the date of the contract and the date of death. On the other hand, a “non-guaranteed contract” is one where the price may
fluctuate depending on changes over time in the price of goods and services purchased.

Using the word “guaranteed” in the definition may suggest that the bill applies only to some purchases of burial plots and not others. Therefore, we suggest avoiding that word in the definition. Instead, we suggest defining “burial plot” as real property in which an individual has a right to be interred when the individual dies, but title to ownership of which is not acquired by the individual. This is very similar to the current definition but avoids using a term of art that may cause confusion about the scope of the bill.

The Association applauds Representative Gillen and the cosponsors of this legislation for their tireless work on this important topic, and we are proud to support House Bill 1019.

We thank you again for this opportunity to be here today, and we would be happy to take any questions you might have.

MAJORITY CHAIRMAN HARPER: Does anybody else have a prepared statement that they want to give first?

MR. GRABOWSKI: No, but they can -- they’ll answer questions.

MAJORITY CHAIRMAN HARPER: Right. Okay. Well, we do have questions, so maybe whoever is the most
familiar---

MR. GRABOWSKI: Right. That’s the idea.

MAJORITY CHAIRMAN HARPER: ---or comfortable to
answer the question can do that.

Representative Maloney, you have a question,
don’t you?

REPRESENTATIVE MALONEY: Yeah; I do.

Thank you, Madam Chair.

You know, I appreciate your testimony and you
fellows’ experience and your, really, support in the fact
of the rights to a burial plot and so on.

I guess for me trying to figure out a way in
which these folks would be guaranteed a way to visit
something, I keep coming back to what seems to be gray to
me about the right to the property, this registered plot,
if you will, and I think the Chairwoman brought up a good
point. But I want to keep going back to some of the
ancient history that we have here, and I’ll go back to a
practical sense of my own property.

So is there anything -- and I did used to know
some of this in the past, but I seem to have put it aside
in the data processor. Could I utilize this plot at my
property or make another one and create my own burial plots
for me and my family?

MAJORITY CHAIRMAN HARPER: The question that he
had asked earlier was, under current law, could he take this plot that just happens to be on his or near his land, a piece of which, move the headstones, and just plow it under---

REPRESENTATIVE MALONEY: Or---

MAJORITY CHAIRMAN HARPER: Or---

REPRESENTATIVE MALONEY: Create my own burial lots.

MAJORITY CHAIRMAN HARPER: ---or create more of them? Do you know what the current law would be on that?

MR. GRABOWSKI: I think probably Jason would be a better one, because that would probably fall under Title 9, and there are certain references there. But I’ll let Jason answer that.

MAJORITY CHAIRMAN HARPER: Right; I agree. It’s a lawyer question, so we’ll give it to Jason.

I do want to make the point that I think everybody realizes the problem is not with cemeteries such as you gentlemen run and that it’s not with people who are members of your association who are doing this as a matter of course.

We do appreciate that you are supporting the bill. That’s important to us.

Okay. But would the lawyer like to answer
Representative Maloney’s questions?

MR. BENION: I’ll try.

And Madam Chairman, thank you for that, and we are happy to be here to support the bill.

And as Frank said, the overwhelming majority of cemeteries in this Commonwealth are granting the kind of access that this bill requires. So I think we’re there 99 percent of the time.

MAJORITY CHAIRMAN HARPER: If you would pull that mic closer to you and then answer Representative Maloney’s questions.

MR. BENION: I’ll give you the horrible lawyer answer: It depends.

REPRESENTATIVE MALONEY: Yeah. And you get paid for that.

MR. BENION: I’m on the clock right now.

REPRESENTATIVE MALONEY: All right. That’s what I thought.

MR. BENION: There are some statutes that may address it. If it qualifies as a historic cemetery, there might be some restrictions on what you can and can’t do.

On the other hand, if it’s a cemetery where someone had a right to be interred there but hasn’t exercised that right over an incredibly long period of time, you may be able to extinguish that right.
I guess as a very broad, general matter, there is no statute that addresses how you can use your own personal, private property for burial.

REPRESENTATIVE MALONEY: Yeah. And it’s one of the reasons I bring it up in the light of the clarity I think that is needed, I think the clarity and the sacredness of the subject at hand.

But I think in the complication of life that we seem to find ourselves in many a times, there is also this right-of-way question I have, and that is, you know, this particular cemetery is also close to a township road, and so what kind of an authority does a township now usurp if they want to broaden the road? And where does the sacred ground not become sacred if they can do it but we can’t do it?

And so I think when I see this problem, it looks to me as, it has some conflict here. And I frankly wonder about, when you say somebody has “the right” there, what gives us “the right,” and how do we then say, okay, I have the right to bury myself here or have my family and/or me be buried here also?

And so that’s why it comes up to me in the fact that you might be assuming that you’ll be able to inter there, but then you find out later, oh, you didn’t have the right there or there was a right-of-way issue, and that’s
why I think we’re having this hearing. But in the same
respect, those questions come up to me about, you know, and
trying to make it practical in the light that I literally
could have this issue, because there is no deed to this
cemetery next to my property.

MR. BENION: And I don’t think that would be
unusual. And even in the more typical case where you’re
going to a clearly marked operating cemetery, you may or
may not get a deed to the plot that you are purchasing.
Even if you do, you’re not getting a deed in the
traditional sense that you own that piece of land.

REPRESENTATIVE MALONEY: Okay. So I think what I
want to just do is full circle in the fact that if we have
an operating cemetery, a place of organized respect, we’re
obviously seeing something that has been taking place for
quite a while.

Bringing up the other questions that I did was
trying to bring the challenge of the gray area, but yet
those that don’t seem to be very gray, we have a problem.
So it seems to me that this would be a good fix to
something that has been determined.

MAJORITY CHAIRMAN HARPER: Thank you.

REPRESENTATIVE MALONEY: Thank you.

MAJORITY CHAIRMAN HARPER: Now, as to your road
question, because I serve on Transportation.
REPRESENTATIVE MALONEY: Yeah. I threw that in there for you special.

MAJORITY CHAIRMAN HARPER: Yeah.

There are Federal restrictions on what you can use Federal money for that may impact the cemetery. It might not, but it might.

In my own area, there was a very valuable corner on Bethlehem Pike at 202 right near the Montgomery Mall, where there was a pretty little church and a little cemetery. And the Burger King wanted to buy that corner, because it was a really good corner for a Burger King. They actually paid the church to move all those people to the church’s new location.

So, you know, I think these things are getting worked out one way or the other. But it is true, the law is not clear. And those issues may not be solvable with this bill, but we’ll work on them.

REPRESENTATIVE MALONEY: Thank you.

MAJORITY CHAIRMAN HARPER: Anything you want to add? No?

Okay. Other questions for these witnesses?

All right. Thank you very much. We appreciate your being here and appreciate your support and your suggestions, which we will look at as an amendment, okay? Thanks.
MR. BENION: Thank you.

MR. GRABOWSKI: Thank you.

MAJORITY CHAIRMAN HARPER: Those were our last testifiers. Thank you very much.

I want to ask Representative Gillen or Mr. Miller if there’s something that you would like to add.

REPRESENTATIVE GILLEN: No, besides thank you.

Thank you, Frank and your team, for coming here. Thank you to each of the testifiers.

I wanted to also acknowledge the presence -- he was here -- of Elam Herr from PSATS, and he left us with some written testimony in addition.

MAJORITY CHAIRMAN HARPER: You’re right. That should be in your packets. He has made some suggestions as to how we write the definitions.

REPRESENTATIVE GILLEN: And Frank, you didn’t want us using the word “guaranteed,” from what I understand. So I guarantee you -- I mean, I promise you we’ll take a look at that.

Thank you very much, Madam Chair.

MAJORITY CHAIRMAN HARPER: Right.

And I also want to thank Representative Maloney and all of the Members who participated for asking good questions and clarifying the fact that the law is not clear and that that’s why we probably should enact some new
legislation to cover the rights of people to visit their loved ones and to be buried in places that they have purchased a contract to be buried in, okay?

So thank you very much, and that will close the hearing.

(At 10:13 a.m., the public hearing adjourned.)
I hereby certify that the foregoing proceedings
are a true and accurate transcription produced from audio
on the said proceedings and that this is a correct
transcript of the same.

Debra B. Miller
Transcriptionist

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