

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

Committee Substitute for

HOUSE BILL No. 834

(By Mrs. Neal.....)



PASSED April 9,..... 1977

In Effect ninety days from..... Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 834

(By MRS. NEAL)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to defining certain terms; vandalism of caves; prohibiting the sale of speleothems; prohibiting destruction or removal of certain plant or animal life; requiring archeological permits in certain instances; specifying liability of owners of caves and their agents; and providing penalties for specific violations.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

ARTICLE 9. CAVE PROTECTION.

§20-9-1. Definitions.

- 1 Unless the context in which used clearly requires a differ-
- 2 ent meaning, as used in this article:
- 3 (a) "Cave" means any naturally occurring subterranean
- 4 cavity. The word "cave" includes or is synonymous with cav-
- 5 ern, pit, pothole, well, sinkhole and grotto.

6 (b) "Commercial cave" means any cave with improved
7 trails and lighting utilized by the owner for the purpose of
8 exhibition to the general public as a profit or nonprofit enter-
9 prise, wherein a fee is collected for entry.

10 (c) "Gate" means any structure or device located to limit
11 or prohibit access or entry to any cave.

12 (d) "Person or persons" means any individual, partnership,
13 firm, association, trust or corporation.

14 (e) "Speleothem" means a natural mineral formation or
15 deposit occurring in a cave. This includes or is synonymous
16 with stalagnites, stalactites, helectites, anthodites, gypsum
17 flowers, needles, angel's hair, soda straws, draperies, bacon,
18 cave pearls, popcorn (coral), rimstone dams, columns, palettes,
19 flowstone, et cetera. Speleothems are commonly composed of
20 calcite, epsomite, gypsum, aragonite, celestite and other simi-
21 lar minerals.

22 (f) "Owner" means a person who owns title to land where
23 a cave is located, including a person who owns title to a lease-
24 hold estate in such land.

§20-9-2. Vandalism; penalties.

1 It is unlawful for any person, without express, prior,
2 written permission of the owner, to willfully or knowingly:

3 (a) Break, break-off, crack, carve upon, write, burn or
4 otherwise mark upon, remove, or in any manner destroy,
5 disturb, deface, mar or harm the surfaces of any cave or any
6 natural material therein, including speleothems;

7 (b) Disturb or alter in any manner the natural condition
8 of any cave;

9 (c) Break, force, tamper with or otherwise disturb a lock,
10 gate, door or other obstruction designed to control or pre-
11 vent access to any cave, even though entrance thereto may
12 not be gained.

13 Any person violating a provision of this section shall be
14 guilty of a misdemeanor, and, upon conviction thereof, shall
15 be fined not less than one hundred fifty dollars nor more

16 than five hundred dollars, and in addition thereto, may be
17 imprisoned in the county jail for not less than ten days nor
18 more than six months.

§20-9-3. Sale of speleothems unlawful; penalties.

1 It is unlawful to sell or offer for sale any speleothems in
2 this state, or to export them for sale outside the state. A
3 person who violates any of the provisions of this section shall
4 be guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not less than one hundred fifty dollars nor more
6 than five hundred dollars and in addition thereto, may be
7 imprisoned in the county jail for not less than ten days nor
8 more than six months.

§20-9-4. Biological policy; penalties for violation.

1 It is unlawful to remove, kill, harm or disturb any plant or
2 animal life found within any cave: *Provided*, That scientific
3 collecting permits may be obtained from the director as
4 provided in section fifty, article two of this chapter. Gates
5 employed at the entrance or at any point within any cave shall
6 be of open construction to allow free and unimpeded passage
7 of air, insects, bats and aquatic fauna. A person who violates
8 any provision of this section shall be guilty of a misdemeanor,
9 and, upon conviction thereof, shall be fined not less than two
10 hundred dollars nor more than five hundred dollars and in
11 addition thereto, may be imprisoned in the county jail for not
12 less than fifteen days nor more than six months.

§20-9-5. Archeology; permits for excavation; how obtained; prohibitions; penalties.

1 (a) No person may excavate, remove, destroy, injure or
2 deface any historic or prehistoric ruins, burial grounds,
3 archeological or paleontological site including saltpeter work-
4 ings, relics or inscriptions, fossilized footprints, bones or any
5 other such features which may be found in any cave.

6 (b) Notwithstanding the provisions of subsection (a) of
7 this section, a permit to excavate or remove archeological,
8 paleontological, prehistoric and historic features may be ob-
9 tained from the director of natural resources. Such permit shall
10 be issued for a period of two years and may be renewed at

11 expiration. It is not transferable but this does not preclude
12 persons from working under the direct supervision of the per-
13 son holding the permit.

14 A person applying for such a permit must:

15 (1) Provide a detailed statement to the director of natural
16 resources giving the reasons and objectives for excavation or
17 removal and the benefits expected to be obtained from the
18 contemplated work.

19 (2) Provide data and results of any completed excavation,
20 study or collection at the first of each calendar year.

21 (3) Obtain the prior written permission of the director of
22 natural resources if the site of the proposed excavation is on
23 state-owned lands and prior written permission of the owner
24 if the site of such proposed excavation is on privately owned
25 land.

26 (4) Carry the permit while exercising the privileges granted.

27 A person who violates any provision of subsection (a) of this
28 section shall be guilty of a misdemeanor, and, upon conviction
29 thereof, shall be fined not less than one hundred dollars nor
30 more than five hundred dollars, and may be imprisoned in
31 the county jail for not less than ten days nor more than six
32 months. A person who violates any of the provisions of sub-
33 section (b) of this section shall be guilty of a misdemeanor, and,
34 upon conviction thereof, shall be fined not less than one hun-
35 dred dollars nor more than five hundred dollars, and the per-
36 mit herein authorized shall be revoked.

§20-9-6. Liability of owners and agents.

1 (a) Neither the owner of a cave nor his authorized agents
2 acting within the scope of their authority are liable for injuries
3 sustained by any person using such features for recreational or
4 scientific purpose if the prior consent of the owner has been ob-
5 tained and if no charge has been made for the use of such fea-
6 tures.

7 (b) An owner of a commercial cave is not liable for an
8 injury sustained by a spectator who has paid to view the cave,
9 unless such injury is sustained as a result of such owner's

10 negligence in connection with the providing and maintaining
11 of trails, stairs, electrical wires or other modifications, and
12 such negligence is the proximate cause of the injury.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Chuston, Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Hillen, Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. Brooks
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 24
day of April, 1977.

John P. Rowland
Governor

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APR 18 4 07 PM '77
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977
Time 4:30 p.m.

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OFFICE
SECY. OF STATE