

Act 523 of the 1989 Regular Session.

Act 523

HB1127

By: Representative Mahony

"THE ARKANSAS CAVE RESOURCES PROTECTION ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Findings and policy. The General Assembly of Arkansas hereby finds that caves are uncommon geologic phenomena, and that the minerals deposited therein may be rare and occur in unique forms of great beauty which are irreplaceable if destroyed. Also irreplaceable are the cultural resources in caves which are of great scientific and historic value. It is further found that the organisms which live in caves are unusual and of limited numbers; that many are rare and endangered species; and that caves are a natural conduit for groundwater flow and are highly subject to water pollution, thus having far-reaching effects transcending man-made property boundaries. It is therefore declared to be the policy of the State of Arkansas and the intent of this act to protect these unique natural and cultural resources.

SECTION 2. Definitions. As used in this act: (a) "Cave" means any naturally formed cavity beneath the surface of the earth which is enterable by man by a natural entrance into the bedrock. For the purposes of this act, "cave" also includes any rockshelter formed by an overhanging bluff whenever the bluff is undercut by at least twenty feet. "Cave" does not include any mine or other human excavation.

(b) "Cave life" means any life form normally found in a cave or subterranean water system.

(c) "Cold water solution" means solution processes occurring below 70 degrees Fahrenheit.

(d) "Archaeological site" means physical evidence of human activity which is fifty (50) years old or older.

(e) "Owner" means any person, or the State of Arkansas and any of its agencies, departments, boards, commissions and other political subdivisions, holding any possessory estate in any cave, and any agent of such person or governmental entity.

(f) "Sinkhole" means a depression of the surface of the earth due to solution or collapse of material below the surface.

(g) "Speleothem" means any mineral deposit formed within a cave, including but not limited to stalactites, stalagmites, and all other form of minerals precipitated from cold water solution. "Speleothem" does not include cementation of sediments by calcium salts.

SECTION 3. Vandalism: penalties. (a) It shall be unlawful for any person, without express permission of the owner, to purposefully or recklessly:

(1) Break, carve, mark upon, or deface the natural rock surface of any cave, whether wall, ceiling, or floor, any speleothem whether attached or previously broken, or any manmade material within the cave which constitutes an archaeological site or was placed within the cave under permission of the owner.

(2) To remove from the cave any material protected by this act.

(3) Damage in any way any lock, gate, door, or other obstruction designed to control access to any cave, even though entry thereto may not be gained.

(4) Remove or deface any sign stating the cave is posted or citing provisions of this act.

(5) Excavate, deface, or disrupt the integrity of any identifiable archaeological or paleontological site which may be found in any cave.

(b) The entering or remaining in a cave which has not been posted by the owner shall not by itself constitute a violation of this section. Any permission obtained under the provisions of this act shall be deemed sufficient compliance with any law relating to recreational use of private lands. Subject to any restrictions imposed by the owner it shall not be a violation of this act to move any dangerous or obstructive material, or to place shoring or anchorage where necessary for safe passage, nor to place small isolated marks where necessary to recover a location critical to a measurement or study.

(c) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

SECTION 4. Pollution: penalties. (a) It shall be unlawful for any person to knowingly store, dump, litter, dispose of or otherwise place any refuse, garbage, dead animals, sewage, or toxic substances harmful to cave life or humans, in any cave or sinkhole.

(b) It shall be unlawful to burn within a cave or sinkhole any material which produces any smoke or gas which is harmful to any organism naturally occurring in the cave.

(c) This section shall not prohibit the operation within a cave of any source of flame capable of being carried in the hand or attached to a person, provided that the heat and exhaust of such device is not directed onto any cave life or used as prohibited in section 3(a) of this act.

(d) This section shall not be interpreted to prohibit or regulate any agricultural or silvacultural practice whatever, nor to prohibit or regulate the charging of a fee for admission to a cave.

(e) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

SECTION 5. Cave conservation. Any cave owner may, at the owner's discretion and with the consent of the Arkansas Natural Heritage Commission, enter into an agreement with the Arkansas Natural Heritage Commission for the purpose of applying conservation measures to the owner's cave.

SECTION 6. Liability of owners limited. Neither the owner of a cave nor his employees or agents acting within the scope of their authority shall be liable for injuries sustained by any person using the cave for recreational or scientific purposes if no charge has been made for the use of the cave. This section is supplemental to any other limitation of landowner liability which may be in effect.

SECTION 7. Enforcement. In addition to the enforcement of this act by criminal process, an owner may apply to the chancery court of any county in which he has reasonable cause to believe conduct prohibited by this act is occurring or is about to occur for a temporary or permanent injunction restraining any person from such conduct, and the court shall have jurisdiction to grant all proper relief without requiring the owner to post bond during pendency of the action.

SECTION 8. All provisions of this act of a general and permanent nature

are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: March 14, 1989

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