

CHAPTER 118**(HB 556)**

AN ACT providing for the establishment and management of a state park.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) The General Assembly recognizes that the ridge top of Pine Mountain is a unique area desirable for the creation of a trail. Therefore, it is hereby declared that in order to afford the citizens of the Commonwealth an opportunity to enjoy this natural area, to attract out-of-state visitors, to ensure the well-being of our tourism industry, to preserve for future generations the beauty of certain areas untrammelled by man, to provide for the ever-increasing outdoor recreation needs of an expanding population, and to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the outdoor areas and historic resources of the Commonwealth, there is hereby established a certain defined area in the southeastern part of the Commonwealth for ultimate designation as the Pine Mountain Trail State Park, with land in the defined area owned or leased by the Commonwealth or on which the Commonwealth has obtained an easement comprising the initial state park.*
- (2) It is the intent of Sections 1 to 12 of this Act to assure preservation of the scenic, ecological, and other values within the boundaries of the trail and to provide proper management of the recreational, wildlife, water, and other resources within those boundaries. It is further the intent of Sections 1 to 12 of this Act to impose reasonable policies governing the use of land within the authorized boundaries of the trail, except for the restrictions set forth in Sections 1 to 12 of this Act, for the general welfare of the people of the Commonwealth and, where necessary, to enable the Commonwealth or any of its agencies to acquire fee title or lesser interests in land within the boundaries of the trail, in order to maintain the public trust in this unique area.*
- (3) The General Assembly recognizes the valuable contributions that volunteers and private, nonprofit groups have made to the development and maintenance of trails throughout the Commonwealth. In recognition of these contributions, it is further the purpose of Sections 1 to 12 of this Act to encourage and assist volunteer citizen and nonprofit group involvement in the planning, development, maintenance, and management, where appropriate, of the trail.*
- (4) The General Assembly recognizes that the establishment of Pine Mountain Trail State Park is not intended to create a one hundred twenty (120) mile linear barrier around southeastern Kentucky. The General Assembly further recognizes that to ensure the continued economic development of the area, provisions shall be made for means of ingress and egress for owners of property and those with property rights affected by the creation of the trail, and for new road construction, utility facilities, and pipelines that may cross the trail.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context otherwise requires:

- (1) *"Department" means the Kentucky Department of Parks within the Tourism Development Cabinet;*
- (2) *"Person" means an individual, trust, firm, estate, joint stock company, corporation, nonprofit corporation, government corporation, limited liability company, partnership, association, organization, government unit or agency whether federal, state, city, commission, or other political subdivision of the Commonwealth, any interstate body, group of persons acting in concert, or other legal entity;*
- (3) *"Secretary" means the secretary of the Tourism Development Cabinet of the Commonwealth of Kentucky; and*
- (4) *"Trail" means the Pine Mountain Trail State Park, as established in Section 1 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby designated a linear state park, the boundaries of which shall be determined by the department in accordance with this section known as the Pine Mountain Trail State Park, a trail of approximately one hundred twenty (120) miles in length, located exclusively within the boundaries of Kentucky beginning along the border of Kentucky and Virginia at or near Breaks Interstate Park, and extending generally south-southwest along the crest of Pine Mountain to the vicinity of Pine Mountain State Resort Park and continuing south to the Cumberland Gap National Park on the vicinity thereof. Insofar as practicable, the boundaries of the trail from the Breaks Interstate Park to Bad Branch State Nature Preserve shall be a one thousand (1,000) foot corridor, the center of which shall be the crest of Pine Mountain, to the extent that the corridor does not encroach upon the territory of the Commonwealth of Virginia. Insofar as practicable, the boundaries of the trail from the Bad Branch State Nature Preserve to the Pine Mountain State Resort Park shall be a corridor one hundred (100) to two hundred fifty (250) feet along the level top of Pine Mountain. The route of the trail from Pine Mountain State Resort Park to Cumberland Gap National Park shall be a corridor no wider than two hundred fifty (250) feet to be determined by the department. Notwithstanding these boundary limitations, the department may through negotiations with the land owner acquire additional land outside the boundary limitations. The trail shall be depicted on the "Pine Mountain Trail Map," which shall be on file and available for public inspection in the office of the commissioner of the department. The trail map shall delineate those portions of the trail that are owned or leased by the Commonwealth or on which the Commonwealth has obtained an easement and shall be updated periodically solely for the purpose of reflecting additions to those specific areas.*
- (2) *The department may designate connecting or side paths which shall provide additional points of public access to the trail or access to points of interest, and which shall be of the same scenic nature as the trail, except that connecting or side paths shall not be acquired through eminent domain.*
- (3) *Because of its extended length, the department may supplement the trail by support facilities located on certain designated parts of the trail or outside the trail. These support facilities may include, as the department deems necessary and feasible, primitive shelters, fireplaces, safe water supplies, and other related public-use facilities that shall meet*

department standards. No open wood fires shall be permitted on the trail except in areas with support facilities specifically designated for that purpose.

- (4) The trail shall be a state scenic trail, so chosen because of its unique location. It shall be limited to foot use and other nonmotorized uses as permitted on segments where deemed appropriate by the department, and as set forth in Section 5 of this Act.*
- (5) The department shall, no later than June 30, 2003, determine the boundaries of the trail. In determining the boundaries of the trail the department shall not encroach upon any privately owned dwelling, or areas designated for residential structures and their surrounding properties, but shall route the trail around a privately owned dwelling or areas designated for a residential structure.*
- (6) The department shall not acquire through eminent domain any cemetery or its surrounding property which is designated as a cemetery or burial ground on the effective date of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) The power of eminent domain may only be exercised to acquire land in fee within the boundaries of the trail, except that the power of eminent domain shall not be exercised to acquire any privately owned dwelling, areas designated for residential structures and their surrounding properties, or property owned or leased, including adjacent or contiguous tracts of land leased or owned or which may be acquired, for the purposes of operating an oil or gas well, surface or underground coal mine operation, or surface or underground mineral quarrying operation, if the person holds a state permit or license issued by the Department of Surface Mining Reclamation and Enforcement or the Department of Mines and Minerals.*
- (2) Within the boundaries of the trail, the department may acquire, on behalf of the Commonwealth, fee title or lesser interests in land. Acquisition of land may be by gift, by purchase with donated funds, by funds appropriated by the General Assembly, by the use of proceeds from the sale of bonds, by exchange, by assumption of property tax payments, or by other authorized means. Notwithstanding the provisions in KRS 350.085(3) and 353.610, in acquiring any interests the Commonwealth or its agencies shall waive the three hundred (300) foot restriction contained in KRS 350.085(3) and boundary restrictions for a well set forth in KRS 353.610.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) Within the boundaries of the trail, as designated by the department and once acquired:
 - (a) The natural vegetation shall be kept undisturbed except for any clearing required for construction of the trail, occasional vistas, or trail-use facilities described in Sections 1 to 12 of this Act, except as provided under paragraph (c) of subsection (3) of this section. Development and management of each segment of the trail shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to ensure continual maximum benefits from the land;*
 - (b) Hunting of wild game shall be permitted only on or along areas as identified and permitted in administrative regulations as promulgated by the Department of Fish**

and Wildlife Resources after consultation with the Department of Parks, and as permitted under paragraph (c) of subsection (3) of this section; and

- (c) The use of motorized vehicles by the general public within the boundaries of the trail shall be limited, and nothing in Sections 1 to 12 of this Act shall be construed as authorizing the use of motorized vehicles in this area, except upon existing or newly constructed public roadways within the boundaries of the trail and as provided under paragraph (c) of subsection (3) of this section.*
- (2) The department may promulgate administrative regulations authorizing the use of motorized vehicles on areas other than public roadways, when these vehicles are required to meet emergencies where life or health is at risk, or to enable adjacent landowners to have access to their lands or mineral rights, as provided under paragraphs (a) and (c) of subsection (3) of this section.*
- (3) (a) Except as expressly authorized in Sections 1 to 12 of this Act or in the administrative regulations promulgated by the department, or as may be allowed under a change of use permit issued by the department, permissible land uses within the boundaries of the trail as designated by the department shall be as set forth in this section. Uses that lawfully existed upon the effective date of this Act may continue. After the trail boundaries are designated, new or additional uses shall be in compliance with the policy and purposes of Sections 1 to 12 of this Act and shall minimize disturbance to the trail. Above-ground blasting operations authorized under the provisions of KRS 351.315 to 351.375, except those operations conducted on sites utilizing no more than a total of ten thousand (10,000) pounds of explosives or the equivalent on the site, shall be prohibited for new or additional uses within an area of one thousand two hundred fifty (1,250) feet outward from the crest of Pine Mountain on the portion of the trail from Breaks Interstate Park to Bad Branch State Nature Preserve and within an area of five hundred (500) feet outward from the boundary of the trail on the portion of the trail from Bad Branch State Nature Preserve to Pine Mountain State Resort Park. Select cutting of timber or other resources removal may be allowed pursuant to Sections 1 to 12 of this Act and administrative regulations promulgated by the department upon the issuance of a change of use permit. Unless the property is purchased by the department, any net revenue from the cutting of timber or other resources removal shall inure to the benefit of the owner of the property or property rights from which the Commonwealth acquired the property. In promulgating administrative regulations related to Sections 1 to 12 of this Act and in developing the management plan as set forth in Section 7 of this Act, the department shall schedule public hearings in the county in which the trail lies that is affected by the administrative regulation and management plan.*

(b) In the development of management plans as set forth in Section 7 of this Act, the department shall include provisions to allow for means of ingress and egress as provided in paragraph (c) of this subsection by owners of property rights affected by the creation of the trail, and for the construction of new roads, utility facilities, and pipelines that would encroach upon the trail. The department shall promulgate administrative regulations setting forth the procedures required to establish means of ingress and egress relating to obtaining rights-of-way, easements, and permits necessary for the construction of new roads, utility facilities, and pipelines that encroach upon the trail.

- (c) *When the Commonwealth acquires land for the trail authorized by Section 1 of this Act, regardless of whether the trail property is acquired by purchase, eminent domain, donation, or otherwise restricted, the person from whom the property is acquired or restricted or their successor in title shall have the following rights with regard to the property which has been acquired or restricted by the Commonwealth:*
1. *Ingress, egress, and access to trail property for purposes specified in this section or any other provision of law;*
 2. *An easement to use trail property for the purpose of access to adjacent land of the same property owner or their successor, including but not limited to motorized travel;*
 3. *To hunt, fish, or trap on that portion of trail property formerly owned, in accordance with applicable law and administrative regulations;*
 4. *To gather and remove edible, medicinal, or ornamental plants and herbs from that portion of the trail property formerly owned, in accordance with applicable law and administrative regulations; and*
 5. *To access and maintain a cemetery and burial grounds on that portion of trail property formerly owned.*
- (d) *The rights specified in this section or other provisions of law or administrative regulation shall be included in any judgment when property or an interest therein is taken or restricted by eminent domain and shall be included in any contract for purchase, donation, or other acquisition of the property or an interest therein unless voluntarily waived in that document.*
- (6) *Any person owning property or property rights within the boundaries of the trail may apply to the department for a change of use permit. The secretary or the secretary's designee shall hold a public hearing after public notice on the application within sixty (60) days. Any person shall be allowed to present evidence as to whether the use proposed by the applicant is in accordance with the management plan developed pursuant to the provisions of Sections 1 to 12 of this Act, the administrative regulations promulgated pursuant to Sections 1 to 12 of this Act, and other applicable law.*
- (7) *The secretary shall, within sixty (60) days after a hearing, issue an order and accompanying opinion granting the permit, denying the permit, or recommending an alternative use to which the land may be put that is more consistent with the provisions of Sections 1 to 12 of this Act than the use for which the application was made. Any aggrieved party to the hearing shall have the right to petition the local circuit court in which the property lies within thirty (30) days after issuance of the secretary's order.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

A fund for the purpose of carrying out the provisions of Sections 1 to 12 of this Act is hereby created, to be designated as the Pine Mountain Trail fund, and shall consist of all revenues derived from privileges, concessions, contracts, or otherwise, and all moneys received by gifts, contributions, donations, and grants from public or private sources. This shall be a trust and agency fund account maintained and disbursed by the Tourism Development Cabinet to carry out the purposes of Sections 1 to 12 of this Act, after appropriations are made for

administration and other expenses and purposes provided in Sections 1 to 12 of this Act. It shall not lapse, and interest earnings shall accrue to the fund.

SECTION 7. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The trail shall be administered by the department according to the policies and criteria set forth in Sections 1 to 12 of this Act. Within six (6) months of the designation of the trail boundary, the department shall consider the needs of local area citizens and develop a management plan for the trail and shall publicize and hold public hearings and record the views expressed on the management plan in the county in which the trail lies that is affected by the management plan. Within twelve (12) months of development of the management plan, the department shall promulgate administrative regulations that are necessary for the preservation and enhancement of the trail and to carry out the purposes of Section 1 to 12 of this Act, and for control of recreational, educational, scientific, and other uses of these areas in a manner that shall not impair them.*
- (2) *The department shall be responsible for maintaining the trail, building bridges, campsites, shelters, and related public-use facilities where required, to the extent funds are available therefor. The department may enter into written agreements as it relates to any of these functions to one (1) or more nonprofit entities or other persons.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 12 of this Act shall be construed to confer upon any member of the public the right to use or enter upon private lands adjacent to the boundaries of the trail, or to confer on any member of the public the right to enter upon or use any private lands designated as part of the trail until such time as the department has delineated that area as being subject to an easement, purchase, or lease by the Commonwealth under subsection (1) of Section 3 of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

It shall be the duty of the department or, upon the secretary's request, the duty of the Attorney General to bring an action for the recovery of the penalties provided for in Section 10 of this Act, or to bring an action for a restraining order or temporary or permanent injunction to prevent or correct a condition that constitutes or threatens to constitute a violation of any of the provisions of Sections 1 to 12 of this Act. All actions for injunctive relief shall be brought in the name of the Commonwealth of Kentucky and shall be filed in the local Circuit Court in which the property lies.

SECTION 10. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person, corporation, city, county, or other governmental subdivision who violates any of the provisions of Sections 1 to 12 of this Act shall be liable for a civil penalty not to exceed five hundred dollars (\$500) per day for any violation, and in addition may be enjoined from continuing the violation. Each day upon which any violation occurs or continues shall constitute a separate offense.*
- (2) *No person shall trespass on private land adjacent to or within the boundaries of the trail. Any person who:*

- (a) *Unintentionally violates the provisions of this section shall be subject to a prepayable fine of one hundred dollars (\$100);*
- (b) *Intentionally violates the provisions of this section shall be subject to a prepayable fine of two hundred dollars (\$200); and*
- (c) *Continues to trespass or intentionally violates the provisions of this section and causes damage to the private property may be prosecuted under the provisions of KRS Chapter 512.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the provisions of subsection (3)(a) of Section 5 of this Act, nothing in Sections 1 to 12 of this Act shall be construed or interpreted as affecting, in any way, the legitimate use of surface and subsurface property adjacent to or visible from the trail, whether such use was in effect upon the designation of the trail or not, including but not limited to timbering, oil and gas operations, mining, both by surface and underground mining means, or any other legitimate use of surface or mineral property adjacent to or within view of the trail.*
- (2) *Use of the lands outside of the boundary of the trail shall not be limited or restricted because the lands may be viewed from the trail. The viewshed of the trail shall be limited to the trail boundary for any land use regulation of lands outside the boundary of the trail.*
- (3) *The General Assembly finds that the boundaries for the trail prescribed in Sections 1 to 12 of this Act are adequate and sufficient to protect areas inside the trail that may contain fragile or historic lands; or which may have important historic, cultural, scientific, aesthetic values and natural systems; or that may be renewable resource lands which have importance in terms of long-range productivity of water supply, food, or fiber products; or which could be considered natural hazard lands, including lands subject to frequent flooding, areas of unstable geology, or areas in which the health, safety, or welfare of people, property, or the environment is threatened due to surface coal mining or similar activities conducted outside of the trail boundaries.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act may be cited as the Pine Mountain Trail Act.

Approved March 30, 2002