

HOUSE BILL 442

By McDaniel

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 68 and Title 69, relative to noncommercial
gold mining.

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

SECTION 1. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following as a new, appropriately designated subdivision:

() "Noncommercial gold mining" means to do the following in a manner that is consistent with a hobby or casual use, including use on public lands set aside or withdrawn from mineral entry for the purpose of noncommercial gold mining, or using pans, sluices, rocker boxes, other nonmotorized equipment, and dredges with motors of ten horsepower (10 h.p.) or less and a suction nozzle of four inches (4") or less in diameter to:

(A) Search or explore for samples of gold, silver, or other precious minerals from among small quantities of aggregate or ore; and

(B) Remove gold, silver, or other precious minerals from aggregate or a vein of ore;

SECTION 2. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following as new, appropriately designated subsections:

(s) Notwithstanding any requirement of this part to the contrary, all noncommercial gold mining that occurs in this state shall be subject to a general permit. The general permit for noncommercial gold mining shall be divided into two (2) classifications as follows:

(1) **Class I:**

(A) Class I includes nonmechanized and hybrid forms of noncommercial gold mining, including, but not limited to:

- (i) Hand tools;
- (ii) Hand-operated sucker tubes;
- (iii) Portable hand sluices;
- (iv) Manually fed high bankers;
- (v) Manually fed power sluices;
- (vi) Pans;
- (vii) Manually fed trommels; and
- (viii) Rocker boxes;

(B) The use of a powered pump solely to provide water for the purposes of washing and classifying material shall not be a basis for excluding forms of noncommercial gold mining that are otherwise nonmechanized or hybrid in nature from Class I;

(C)

(i) No application or written request shall be required from a person who desires to conduct Class I noncommercial gold mining in this state;

(ii) No written permission is required from the commissioner or the division in order for any person to conduct Class I noncommercial gold mining in this state;

(iii) There shall be no fee for conducting Class I noncommercial gold mining in this state;

(D) The following requirements shall apply to all Class I noncommercial gold mining that is conducted in this state:

(i) Noncommercial gold mining is not permitted in streams designated as outstanding natural resource waters;

(ii) Noncommercial gold mining is not permitted in streams that have been placed on the list for contaminated sediments, as maintained by the division of water resources pursuant to § 303d of the federal Clean Water Act, codified in 33 U.S.C. § 1313;

(iii) Noncommercial gold mining is not permitted in any stream or stream segment that is managed for brook trout;

(iv) All disturbances, including excavation, shall be conducted at or below the water surface;

(v) Disturbance of terrestrial vegetation shall be minimized; removal of terrestrial vegetation is prohibited;

(vi) All reject material shall be replaced as close to its original location as possible. Holes shall be filled and no piles of material shall remain. No material from the streambed shall be placed on the stream bank;

(vii) No chemical processing of materials shall be conducted in, or within two hundred feet (200') of, a stream or wetlands, or in any area where chemicals or waste are likely to enter the waters of this state;

(viii) All operations shall take place between sunrise and sunset;

(ix) When moving between different waters, equipment shall be cleaned to minimize the spread of undesirable flora or fauna;

(x) All activities shall be carried out in a manner that will prevent violations of water quality criteria as stated in the

department's Rule 0400-40-03-.03. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by the department's Rule 0400-40-04. These uses include fish and other aquatic life, livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation;

(xi) Any person who engages in noncommercial gold mining in this state shall obtain the necessary authorization to engage in that activity, as required by applicable laws, including, but not limited to, § 10 of the Rivers and Harbors Act of 1899, codified in 33 U.S.C. § 403; § 404 of The Clean Water Act, codified in 33 U.S.C. § 1344; and § 26a of The Tennessee Valley Authority Act of 1933, codified in 16 U.S.C. § 831 et seq.;

(xii) This permit does not authorize access to private property. Arrangements concerning the use of private property shall be made with the landowner;

(xiii) This permit does not authorize the discharge of any waste or other substances that may be harmful to humans, other terrestrial life, or aquatic life into the waters of this state;

(xiv) Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited;

(xv) This permit does not authorize impacts to cultural, historic, or archaeological features or sites;

(xvi) Class I noncommercial gold mining is not permitted in any stream segment with a wetted width of less than thirty feet (30') that is designated by the state or federal government as containing threatened or endangered aquatic species, or aquatic species deemed in need of management. Class I noncommercial gold mining is not permitted in any stream segment designated by the U.S. fish and wildlife service as being critical habitat;

(xvii) Class I noncommercial gold mining is prohibited in any stream reach with a wetted width of less than three feet (3') at the spot of the activity;

(xviii) Disturbance or destabilization of stream banks is prohibited. All digging activities shall be conducted at least one foot (1') from the water's edge on the day of the activity. In areas where the stream bank is solid bedrock, deposited material closer than one foot (1') to the water's edge may be removed by the use of sucker tubes or other crevicing tools; provided, that subdivision (s)(1)(D)(xxvi) is not violated;

(xix) Hand-operated tools no larger than a number two (#2) shovel may be used to excavate material;

(xx) All reject material shall remain in the stream, filling any excavated holes, replaced to mimic original conditions. Concentrates may be removed for later, off-site processing;

(xxi) Panning activities shall maintain a distance of twenty-five feet (25') between dig sites as measured along the stream channel. More than one (1) pan may be in use at a given dig site;

(xxii) Sluices shall maintain a distance of fifty feet (50') between installations as measured along the stream channel. Installations may contain more than one (1) sluice box;

(xxiii) Sluice dams shall be constructed so that upstream and downstream boat, or other recreational, access is not obstructed;

(xxiv) All sluice dams shall be broken down daily so as not to alter stream flow and the disturbed stream substrate returned as close to its original location as possible;

(xxv) No objectionable color contrast, or plume, shall be visible in the stream greater than three hundred feet (300') downstream of the noncommercial gold mining activities. No visible solids shall be deposited on the streambed downstream of the noncommercial gold mining activities; and

(xxvi) The use of pry bars, chisels, wedges, shovels, and similar tools to break layers of bedrock is not permitted. Loose rock may be moved and returned to its original position, but competent bedrock shall not be disturbed; and

(2) Class II:

(A) Class II includes mechanized forms of noncommercial gold mining, including, but not limited to:

(i) Dredges;

(ii) High banker combo dredges; and

(iii) Any other mechanized means of moving or excavating stream material;

(B)

(i) No application or written request shall be required from a person who desires to conduct Class II noncommercial gold mining in this state;

(ii) No written permission is required from the commissioner or the division in order for any person to conduct Class II noncommercial gold mining in this state;

(iii) There shall be no fee for conducting Class II noncommercial gold mining in this state;

(C) The following requirements shall apply to all Class II noncommercial gold mining that is conducted in this state:

(i) All of the requirements listed in subdivisions (s)(1)(D)(i)–(xv);

(ii) Class II noncommercial gold mining is not permitted in any stream segment designated by the state or federal government as containing threatened or endangered aquatic species or aquatic species deemed in need of management or designated as being critical habitat;

(iii) Class II noncommercial gold mining is not permitted in any stream that has been placed on the impaired waters list for channel, physical substrate, or habitat alteration that is maintained

by the division of water resources pursuant to § 303d of the federal Clean Water Act, codified in 33 U.S.C. § 1313;

(iv) All operations must take place in-stream. Operating on stream banks or in the floodplain is not permitted;

(v) Operations shall not be conducted within one foot (1') of the water's edge on the day of the activity. In areas where the stream bank is solid bedrock, deposited material closer than one foot (1') to the water's edge may be removed by mechanized methods; provided, that subdivision (s)(2)(C)(xvi) is not violated;

(vi) Class II noncommercial gold mining is prohibited in any stream with a wetted width of less than five feet (5'). The maximum amount of stream material that may be processed using equipment identified in subdivision (s)(2)(A) shall be limited to five (5) cubic yards per day;

(vii) The permit number shall be prominently displayed on any in-stream equipment, using two-inch or larger characters and numbers;

(viii) Pump engines shall not exceed ten horsepower (10 h.p.);

(ix) All engines shall be equipped with a muffler and spark arrestor;

(x) All operations shall maintain a distance of one hundred feet (100') between sites, as measured along the stream channel. Only one (1) mechanized form of noncommercial gold mining may be in use at a given site;

(xi) All fueling or servicing operations shall be performed at least twenty-five feet (25') away from the stream or wetlands or at an established parking area. Propane-powered equipment is excluded from this requirement;

(xii) Blaster nozzles may be used only underwater;

(xiii) Operations shall not be conducted within fifty feet (50') of any bridge supports, other road or trail crossings, weirs, docks, ramps, or other public or private structures;

(xiv) No objectionable color contrast, or plume, shall be visible in the stream greater than three hundred feet (300') downstream of the equipment discharge. No visible solids shall be deposited on the streambed downstream of the dredging operation;

(xv) Operations shall be conducted so that upstream and downstream boat, or other recreational, access is not obstructed;

(xvi) The use of pry bars, chisels, wedges, shovels, and similar tools to break layers of bedrock is not permitted. Loose rock may be moved and returned to its original position, but competent bedrock shall not be disturbed; and

(xvii) All reject material shall remain in the stream, filling any excavated holes, replaced to mimic original conditions.

Concentrates may be removed for later, off-site processing.

(t) The following additional requirements shall apply to noncommercial gold mining that is conducted on properties that are owned, leased, or managed by the Tennessee wildlife resources agency (TWRA):

(1) Class I noncommercial gold mining is not permitted in any stream with a wetted width of less than three feet (3'); and

(2) Class II noncommercial gold mining is permitted in the South Cherokee National Forest and Wildlife Management Area. However, Class II activities may be prohibited on other TWRA lands.

SECTION 3. This act shall take effect July 1, 2015, the public welfare requiring it.