

State of South Dakota

NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2018

714Z0049

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to provide for public recreational use of certain waters
2 overlying public and private property and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 The Legislature finds:

6 (1) The South Dakota Supreme Court, in *Parks v. Cooper*, 2004 SD 27 and *Duerre v.*
7 *Hepler*, 2017 SD 8, held that the Legislature has the obligation to determine the
8 extent of public use of water overlying private property for recreational purposes; and

9 (2) The Legislature must balance the interests of recreational users and the rights of
10 private property owners to provide a constitutionally sound and manageable basis for
11 establishing public recreational use of water overlying private property in accordance
12 with this Act.

13 Section 2. That the code be amended by adding a NEW SECTION to read:

14 Terms used in this Act mean:

15 (1) "Commission," the Game, Fish and Parks Commission;

16 (2) "Department," the Department of Game, Fish and Parks;



- 1 (3) "Meandered lake," any natural water body, except a river or stream, for which a
2 meander line survey was included as part of the official survey conducted by the
3 United States surveyor general for the land on which the lake is situated and the
4 meander lines are shown on plats made by the United States General Land Office;
- 5 (4) "Nonmeandered lake," any natural lake that is not a meandered lake;
- 6 (5) "Recreational use," use for one or more of the following activities, except as
7 otherwise limited by law: hunting, fishing, swimming, floating, boating, trapping,
8 off-road driving, water sports, or snowmobiling.

9 Section 3. That the code be amended by adding a NEW SECTION to read:

10 The bed of each meandered lake within the lake's ordinary high water mark and the water
11 of each meandered lake is open to recreational use.

12 Section 4. That the code be amended by adding a NEW SECTION to read:

13 Any person is entitled to recreational use of the portion of a nonmeandered lake that overlies
14 private property if that person has permission from the owner of the private property.

15 Section 5. That the code be amended by adding a NEW SECTION to read:

16 Any nonmeandered lake overlying private property is closed to recreational use without
17 permission of any owner of the private property underlying the nonmeandered lake unless the
18 owner of the private property installs conspicuous markers, which may consist of signs or buoys,
19 to identify the area of the nonmeandered lake that is open to public recreational use without
20 permission or agreement as provided under this Act.

21 Section 6. That the code be amended by adding a NEW SECTION to read:

22 The liability of any owner of private property underlying a meandered or nonmeandered lake
23 is limited as provided in §§ 20-9-12 to 20-9-18, inclusive.

24 Section 7. That the code be amended by adding a NEW SECTION to read:

1 Any person who enters or remains upon private property or waters overlying private property
2 in violation of this Act is guilty of a criminal trespass in accordance with the applicable
3 provisions of chapters 41-9 and 22-35, except for unarmed retrieval of lawfully taken small
4 game as authorized in § 41-9-8 and subject to the affirmative defenses set forth in § 22-35-7.

5 Section 8. Whereas, this Act is necessary for the immediate preservation of the public peace,
6 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
7 effect from and after its passage and approval.