

# HB0068S01 compared with HB0068

~~text~~ shows text that was in HB0068 but was deleted in HB0068S01.

inserted text shows text that was not in HB0068 but was inserted into HB0068S01.

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Representative Dixon M. Pitcher proposes the following substitute bill:

## PROTECTION OF STATE PARK RESOURCES

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dixon M. Pitcher**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill ~~modifies Title 76, Chapter 6, Offenses Against Property;~~ addresses crimes committed on state park lands.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits ~~an individual;~~ a person from exercising unauthorized control over, damaging, defacing, excavating, altering, destroying, or removing any:
  - geological area, site, feature, or formation located on property administered, managed, or owned by the Division of State Parks and Recreation; or
  - property, structure, or resource belonging to or located on property administered, managed, or owned by the Division of State Parks and Recreation;

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- ▶ provides a method of calculating the value of a division resource;
- ▶ authorizes the division to recover attorney fees, costs, and reimbursement for staff time spent on an enforcement proceeding from ~~an individual~~ a person who violates the chapter; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**76-6-206.2**, as last amended by Laws of Utah 2009, Chapter 344

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-6-206.2** is amended to read:

**76-6-206.2. ~~Crimes~~ Criminal trespass on state park lands -- Penalties.**

(1) For purposes of this section:

(a) "Authorization" means specific written permission by, or contractual agreement with, the Division of Parks and Recreation.

~~[(b) "Criminal trespass" means the elements of the crime of criminal trespass, as set forth in Section 76-6-206.]~~

~~[(c)]~~ (b) "Division" means the Division of Parks and Recreation, created in Section 79-4-201.

(c) (i) "Division resource" means ~~any~~ a:

~~(ii)~~ (A) geological area, site, feature, or formation that is located on property administered, managed, or owned by the division; or

~~(iii)~~ (B) property, structure, or resource administered, managed, or owned by the division or located on property administered, managed, or owned by the division.

(ii) "Division resource" does not mean a geological area, site, feature, formation, property, structure, or resource with an estimated value under Subsection (3)(d) of \$100 or less.

(d) "State park lands" means all lands administered by the division.

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(2) A person is guilty of ~~[criminal trespass]~~ a crime on state park lands and is liable for the civil damages prescribed in Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization, the person:

- (a) constructs improvements or structures on state park lands;
- (b) uses or occupies state park lands for more than 30 days after the cancellation or expiration of authorization;
- (c) knowingly or intentionally uses state park lands for commercial gain;
- (d) intentionally or knowingly grazes livestock on state park lands, except as provided in Section 72-3-112; ~~[or]~~
- (e) remains, after being ordered to leave by someone with actual authority to act for the division, or by a law enforcement officer~~[-];~~

~~[(3) A person is not guilty of criminal trespass if that person enters onto state park lands:]~~

~~[(a) without first paying the required fee; and]~~

~~[(b) for the sole purpose of pursuing recreational activity.]~~

~~[(4) A violation of Subsection (2) is a class B misdemeanor.]~~

(f) intentionally commits an act that causes damage, defacement, excavation, permanent alteration, or destruction of ~~{any}~~a division resource; or

(g) removes or exercises control over any division resource with the intent to temporarily or permanently deprive the division.

(3) (a) A violation of Subsections (2)(a) through (e) is a class B misdemeanor.

(b) A violation of ~~{Subsection}~~Subsections (2)(f) or (g) is a:

(i) class A misdemeanor; or

(ii) third degree felony, if the damage to the division is calculated under Subsection~~{~~(3)(d) is \$1,500 or greater.

(c) ~~{If an individual has already been}~~An person who is convicted of a ~~{crime described in}~~subsequent violation of Subsection (2)~~{, each subsequent conviction}~~ shall be punishable ~~{as}~~for:

(i) a class A misdemeanor for a subsequent violation of Subsections (2)(a) through (e);  
and

(ii) one degree higher than provided in Subsection (3)(b) for subsequent violation of

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### Subsections (2)(f) or (g).

(d) The amount of damage to the division shall be calculated ~~by~~ as the greater of the:

(i) ~~the~~ value of the division resource involved in the violation; or

(ii) ~~the~~ estimated cost to restore or repair the division resource involved in the violation, including:

(A) division staff time; and

(B) the cost of any expert evaluation of the possibility of restoring or repairing the division resource.

(4) Any division resource discovered, collected, excavated, or offered for sale or exchange as a result of a violation of Subsection (2) shall be surrendered to the division.

(5) In addition to restitution, as provided in Section 76-3-201, a person who commits any act described in Subsection (2) may also be liable for civil damages in the amount of three times the value of:

(a) damages resulting from a violation of Subsection (2);

(b) the [water, mineral, vegetation, improvement, or structure on state park lands] division resource that is removed, damaged, altered, defaced, excavated, destroyed, used, or consumed without authorization; or

~~[(c) the historical, prehistorical, archaeological, or paleontological resource on state park lands that is removed, destroyed, used, or consumed without authorization; or]~~

~~[(d)]~~ (c) the consideration which would have been charged by the division for unauthorized use of the land and resources during the period of trespass.

(6) (a) In addition to the damages recoverable under Subsection (5), a person who violates Subsection (2) is also liable to the division for any costs incurred by the division in any enforcement proceeding, including attorney fees, costs, and reimbursement for time spent by a division employee on the enforcement proceeding.

(b) The division shall have the burden of proof by a preponderance of the evidence in a civil or administrative proceeding.

~~[(6)]~~ (7) Civil damages under [Subsection (5)] Subsections (5) and (6) may be collected in a separate action by the division, and shall be deposited in the State Parks Fees Restricted Account as established in Section 79-4-402.

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**Legislative Review Note**

~~as of 1-6-14 2:01 PM~~

~~Office of Legislative Research and General Counsel}~~