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Public Waters Access Act Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott H. Chew

Senate Sponsor:

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LONG TITLE**General Description:**

This bill addresses access to public waters.

Highlighted Provisions:

This bill:

- modifies the definition of "navigable water";
- addresses public recreation access;
- addresses when a stream bed is considered private property;
- clarifies when an easement for public recreational access is created; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-29-102, as last amended by Laws of Utah 2023, Chapter 34

73-29-201, as enacted by Laws of Utah 2010, Chapter 410

73-29-203, as enacted by Laws of Utah 2010, Chapter 410

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

Section 1. Section **73-29-102** is amended to read:

73-29-102 . Definitions.

As used in this chapter:

- (1) "Division" means the Division of Wildlife Resources.
- (2) "Floating access" means the right to access public water flowing over private property for floating and fishing while floating upon the water.
- (3) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of

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- 31 which is controlled by a dike, berm, or headgate that retains or manages the flow or
32 depth of water, including connecting channels.
- 33 (4) "Navigable water" means a water course that [~~in its natural state without the aid of~~
34 ~~artificial means is useful for commerce and has a useful capacity as a public highway of~~
35 ~~transportation.] at the time of statehood was useful for trade and travel:~~
- 36 (a) in the water course's ordinary and natural condition; and
37 (b) as established on a segment-by-segment basis.
- 38 (5) "Private property to which access is restricted" means privately owned real property:
39 (a) that is cultivated land, as defined in Section 23A-5-317;
40 (b) that is:
41 (i) properly posted, as defined in Section 23A-5-317;
42 (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or
43 (iii) posted as described in Subsection 76-6-206.3(2)(c);
44 (c) that is fenced or enclosed as described in:
45 (i) Subsection 76-6-206(2)(b)(ii); or
46 (ii) Subsection 76-6-206.3(2)(b); or
47 (d) that the owner or a person authorized to act on the owner's behalf has requested a
48 person to leave as provided by:
49 (i) Section 23A-5-317;
50 (ii) Subsection 76-6-206(2)(b)(i); or
51 (iii) Subsection 76-6-206.3(2)(a).
- 52 (6) "Public access area" means the limited part of privately owned property that:
53 (a) lies beneath or within three feet of a public water or that is the most direct, least
54 invasive, and closest means of portage around an obstruction in a public water; and
55 (b) is open to public recreational access under Section 73-29-203; and
56 (c) can be accessed from an adjoining public access area or public right-of-way.
- 57 (7) "Public recreational access" means the right to engage in recreational access established
58 in accordance with Section 73-29-203.
- 59 (8)(a) "Public water" means water:
60 (i) described in Section 73-1-1; and
61 (ii) flowing or collecting on the surface:
62 (A) within a natural or realigned channel; or
63 (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
- 64 (b) "Public water" does not include water flowing or collecting:

- 65 (i) on impounded wetland;
- 66 (ii) on a migratory bird production area, as defined in Section 23A-13-101;
- 67 (iii) on private property in a manmade:
- 68 (A) irrigation canal;
- 69 (B) irrigation ditch; or
- 70 (C) impoundment or reservoir constructed outside of a natural or realigned
- 71 channel; or
- 72 (iv) on a jurisdictional wetland described in 33 C.F.R. Sec. 328.3.
- 73 (9)(a) "Recreational access" means to use a public water and to touch a public access
- 74 area incidental to the use of the public water for:
- 75 (i) floating;
- 76 (ii) fishing; or
- 77 (iii) waterfowl hunting conducted:
- 78 (A) in compliance with applicable law or rule, including Sections 23A-5-314,
- 79 73-29-203, and 76-10-508; and
- 80 (B) so that the individual who engages in the waterfowl hunting shoots a firearm
- 81 only while within a public access area and no closer than 600 feet of any
- 82 dwelling.
- 83 (b) "Recreational access" does not include:
- 84 (i) hunting, except as provided in Subsection (9)(a)(iii);
- 85 (ii) wading without engaging in activity described in Subsection (9)(a); or
- 86 (iii) any other activity.
- 87 Section 2. Section **73-29-201** is amended to read:
- 88 **73-29-201 . General access provisions -- Private property designation.**
- 89 (1) The public may use a public water for recreational activity if:
- 90 (a) the public water:
- 91 (i) is a navigable water; or
- 92 (ii) is on public property; and
- 93 (b) the recreational activity is not otherwise prohibited by law.
- 94 (2) A person may access and use a public water on private property for any lawful purpose
- 95 only:
- 96 (a) with the private property owner's permission[-] ; or
- 97 (b) when the person establishes by clear and convincing evidence the existence of an
- 98 easement established under Section 73-29-203.

- 99 (3) A person may not access or use a public water on private property for recreational
100 purposes if the private property is property to which access is restricted, unless public
101 recreational access is established under Section 73-29-203.
- 102 (4)(a) There is a rebuttable presumption that a stream bed is private property for
103 purposes of access under this chapter.
- 104 (b) The person claiming that a stream bed is not private property for purposes of access
105 under this chapter has the burden of proof to establish by clear and convincing
106 evidence that the stream bed is:
- 107 (i) property owned by a federal, state, or local government;
108 (ii) known to be navigable water based on the standards set forth in this chapter; or
109 (iii) adjudicated in a court with jurisdiction to be navigable water.
- 110 Section 3. Section **73-29-203** is amended to read:
- 111 **73-29-203 . Establishment of public recreational access.**
- 112 (1) Public recreational access is established and a prescriptive easement for the public
113 recreational access is created only if:
- 114 (a) the private property has been used by the public for recreational access requiring the
115 use of the public water for a period of at least 10 consecutive years that begins after
116 September 22, 1982; and
- 117 (b) the public use has been:
- 118 (i) continuous during the season conducive to the recreational access;
119 (ii) open and notorious;
120 (iii) adverse; and
121 (iv) without interruption.
- 122 (2) The permissive use of a public water on private property granted by the owner is not an
123 adverse use.
- 124 (3)(a) A property owner's overt act intended to interrupt uninvited recreational access is
125 a sufficient interruption to restart any period of use that may have already begun
126 under Subsection (1) if the evidence, taken as a whole, shows that the act came to the
127 attention of the public or resulted in actual interruption.
- 128 (b) If an overt act is established in a final judgment to have interrupted recreational
129 access, no other person may challenge the existence of the overt act in a subsequent
130 action.
- 131 (4) The extent and nature of the public recreational access permitted under Subsection (1) is
132 determined by the nature of the historical recreational access during the 10 consecutive

133 years required under Subsection (1).

134 (5) When a public water is a lake, pond, or reservoir located on a natural stream and on
135 private property, any portion that has been developed or protected for private hunting is
136 not subject to public recreational access even though the remainder of the public water
137 qualifies for public recreational access under this section.

138 (6) A right of public recreational access on private property, established in accordance with
139 this section, may not be closed without authorization of other law.

140 Section 4. **Effective Date.**

141 This bill takes effect on May 7, 2025.