

1 **WATER RELATED LIABILITY AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies provisions related to liability of owners or operators of water
8 facilities, streams, or rivers.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ clarifies language related to operators of a water facility;
- 12 ▶ addresses liability of an owner or operator of a water facility, stream, or river along
- 13 certain trails;
- 14 ▶ codifies standard of ordinary care;
- 15 ▶ addresses liability of an owner or operator of a water facility; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **73-1-8**, as last amended by Laws of Utah 2007, Chapter 357

24

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

26 Section 1. Section **73-1-8** is amended to read:

27 **73-1-8. Duties of owners or operators -- Bridges and trails -- Liability.**

28 (1) As used in this section, "water facility" means a dam, pipeline, culvert, fire hydrant,
29 flume, conduit, ditch, head gate, canal, reservoir, storage tank, spring box, well, meter, weir,
30 valve, casing, cap, or other facility used for the diversion, transportation, distribution,
31 measurement, collection, containment, or storage of water, stormwater, wastewater, or sewage.

32 [~~(1) The~~] (2) An owner or operator of [any ditch, canal, flume or other watercourse] a

33 water facility shall:

34 (a) maintain ~~[it]~~ the water facility to prevent waste of water or damage to the property
35 of others; and

36 (b) by bridge or otherwise, keep ~~[it]~~ the water facility in good repair where ~~[it]~~ the
37 water facility crosses ~~[any]~~ a public road or highway to prevent obstruction to travel or damage
38 or overflow on the public road or highway.

39 ~~[(2) The provisions of Subsection (1)(b) do]~~ (3) Subsection (2)(b) does not apply
40 where a governmental entity maintains or elects to maintain a bridge or other device to prevent
41 obstruction to travel or damage or overflow on the public road or highway.

42 ~~[(3) An]~~ (4) In addition to immunity if the conditions of Title 57, Chapter 14,
43 Limitations on Landowner Liability, are met, an owner or operator of a ~~[ditch, canal]~~ water
44 facility, stream, or river, is immune from suit if:

45 (a) the damage or personal injury arises out of, is in connection with, or results from
46 the use of a ~~[pedestrian or equestrian]~~ trail that is:

47 (i) used for recreational purposes; and

48 (ii) located along a ~~[ditch, canal]~~ water facility, stream, or river, regardless of
49 ownership or operation of the ~~[ditch, canal]~~ water facility, stream, or river;

50 (b) the trail is designated under a general plan adopted by a municipality under Section
51 10-9a-401 or by a county under Section 17-27a-401;

52 (c) the trail right-of-way or the right-of-way where the trail is located is open to public
53 use as evidenced by a written agreement between the owner or operator of the trail
54 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
55 where the trail is located; and

56 (d) the written agreement:

57 (i) contains a plan for operation and maintenance of the trail; and

58 (ii) provides that an owner or operator of the trail right-of-way, or of the right-of-way
59 where the trail is located has, at minimum, the same level of immunity from suit as the
60 governmental entity in connection with or resulting from use of the trail.

61 (5) (a) The duty under Subsection (2) requires only ordinary care and may not be
62 construed to impose strict liability or to otherwise increase the liability of the owner or operator
63 of a water facility.

64 (b) An owner or operator of a water facility is not liable for damage or injury caused

65 by:

66 (i) the diversion or discharge of water or another substance into the water facility by a
67 third party without the permission of the owner or operator of the water facility;

68 (ii) any other act or omission of a third party, other than an employee or agent of the
69 owner or operator of the water facility; or

70 (iii) an act of God, including fire, earthquake, storm, flash floods, or similar natural
71 occurrences.

72 (6) This section may not be interpreted to impair a defense that an owner or operator of
73 a water facility may assert in a civil action.