

1 STATE PARKS AND RECREATION

2 AMENDMENTS

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Brent H. Goodfellow

6 House Sponsor: Neal B. Hendrickson

8 LONG TITLE

9 General Description:

10 This bill modifies the Motor Vehicles Code and the State Boating Act by amending
11 Board of Parks and Recreation provisions.

12 Highlighted Provisions:

13 This bill:

- 14 ▶ amends definitions;
- 15 ▶ authorizes the Board of Parks and Recreation to set fees for:
 - 16 • off-highway vehicle safety education and training programs;
 - 17 • knowledge and skills tests for off-highway vehicle use;
 - 18 • registering a boat livery; and
 - 19 • the Division of Parks and Recreation's boating safety course;
- 20 ▶ changes the number of days that a nonresident motorboat or sailboat may be in the
21 state from no more than 14 days to no more than 60 days to be exempt from
22 registration;
- 23 ▶ amends the restriction on an operator of a vessel to not exceed a wakeless speed in
24 certain circumstances; and
- 25 ▶ makes technical changes.

26 Monies Appropriated in this Bill:

27 None

28 Other Special Clauses:

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **41-22-2**, as last amended by Laws of Utah 2007, Chapter 136

33 **41-22-33**, as last amended by Laws of Utah 2002, Chapter 148

34 **73-18-2**, as last amended by Laws of Utah 1998, Chapter 205

35 **73-18-4**, as last amended by Laws of Utah 1998, Chapter 205

36 **73-18-9**, as last amended by Laws of Utah 1987, Chapter 99

37 **73-18-15.1**, as repealed and reenacted by Laws of Utah 2002, Chapter 200

38 **73-18-15.2**, as last amended by Laws of Utah 2002, Chapter 200

39

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

41 Section 1. Section **41-22-2** is amended to read:

42 **41-22-2. Definitions.**

43 As used in this chapter:

44 (1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by
45 the Board of Parks and Recreation.

46 (2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width,
47 having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure
48 tires, having a seat designed to be straddled by the operator, and designed for or capable of
49 travel over unimproved terrain.

50 (3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in
51 Subsection (2), (9), or (20), designed for or capable of travel over unimproved terrain.

52 (b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to
53 carry a disabled person, any vehicle not specifically designed for recreational use, or farm
54 tractors as defined under Section 41-1a-102.

55 (4) "Board" means the Board of Parks and Recreation.

56 (5) "Dealer" means a person engaged in the business of selling off-highway vehicles at
57 wholesale or retail.

- 58 (6) "Division" means the Division of Parks and Recreation.
- 59 (7) "Low pressure tire" means any pneumatic tire six inches or more in width designed
60 for use on wheels with rim diameter of [~~12~~] 14 inches or less and utilizing an operating pressure
61 of ten pounds per square inch or less as recommended by the vehicle manufacturer.
- 62 (8) "Manufacturer" means a person engaged in the business of manufacturing
63 off-highway vehicles.
- 64 (9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator
65 and designed to travel on not more than two tires.
- 66 (10) "Motor vehicle" means every vehicle which is self-propelled.
- 67 (11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain
68 type II vehicle, or motorcycle.
- 69 (12) "Off-highway implement of husbandry" means every all-terrain type I vehicle,
70 motorcycle, or snowmobile that is used by the owner or his agent for agricultural operations.
- 71 (13) "Operate" means to control the movement of or otherwise use an off-highway
72 vehicle.
- 73 (14) "Operator" means the person who is in actual physical control of an off-highway
74 vehicle.
- 75 (15) "Organized user group" means an off-highway vehicle organization incorporated as
76 a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit
77 Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.
- 78 (16) "Owner" means a person, other than a person with a security interest, having a
79 property interest or title to an off-highway vehicle and entitled to the use and possession of that
80 vehicle.
- 81 (17) "Public land" means land owned or administered by any federal or state agency or
82 any political subdivision of the state.
- 83 (18) "Register" means the act of assigning a registration number to an off-highway
84 vehicle.
- 85 (19) "Roadway" is used as defined in Section 41-6a-102.

86 (20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and
87 steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

88 (21) "Street or highway" means the entire width between boundary lines of every way
89 or place of whatever nature, when any part of it is open to the use of the public for vehicular
90 travel.

91 Section 2. Section **41-22-33** is amended to read:

92 **41-22-33. Fees for safety and education program -- Penalty -- Unlawful acts.**

93 (1) (a) A [\$2] fee set by the board in accordance with Section 63-38-3.2 shall be added
94 to the registration fee required to register an off-highway vehicle under Section 41-22-8 to help
95 fund the off-highway vehicle safety and education program.

96 (b) The division may also collect a fee [~~not to exceed \$10~~] set by the board in
97 accordance with Section 63-38-3.2 from each person who:

98 (i) receives the training and takes the knowledge and skills test[~~, or a fee not to exceed~~
99 ~~\$5 from each person who~~] for off-highway vehicle use; or

100 (ii) takes the knowledge and skills test for off-highway vehicle use.

101 (c) If the board modifies the fee under Subsection (1)(a), the modification shall take
102 effect on the first day of the calendar quarter after 90 days from the day on which the board
103 provides the State Tax Commission:

104 (i) notice from the board stating that the board will modify the fee; and

105 (ii) a copy of the fee modification.

106 (2) (a) To help defray instructors' costs, the division may reimburse volunteer certified
107 off-highway vehicle safety instructors up to \$6 for each student who receives the training and
108 takes the knowledge and skills test.

109 (b) On or before the 10th day of each calendar month, volunteer off-highway vehicle
110 safety instructors shall report to the division all fees collected and students trained and shall
111 accompany the report with all money received for off-highway vehicle training.

112 (c) If a volunteer off-highway vehicle safety instructor intentionally or negligently fails
113 to pay the amount due, the division may assess a penalty of 20% of the amount due. All

114 delinquent payments shall bear interest at the rate of 1% per month. If the amount due is not
115 paid because of bad faith or fraud, the division shall assess a penalty of 100% of the total due
116 together with interest.

117 (d) All fees collected from students shall be kept separate and apart from private funds
118 of the instructor and shall at all times belong to the state. In case of an assignment for the
119 benefit of creditors, receivership, or bankruptcy, the state shall have a preferred claim against
120 the instructor, receiver, or trustee for all money owing the state for training and shall not be
121 stopped from asserting the claim by reason of commingling of funds or otherwise.

122 (e) A person may not:

- 123 (i) willfully misdate an off-highway vehicle education safety certificate;
- 124 (ii) issue an incomplete certificate; or
- 125 (iii) issue a receipt in lieu of a certificate.

126 Section 3. Section **73-18-2** is amended to read:

127 **73-18-2. Definitions.**

128 As used in this chapter:

129 (1) "Board" means the Board of Parks and Recreation.

130 (2) "Boat livery" means ~~[an entity which]~~ a person that holds ~~[any]~~ a vessel for
131 renting~~[-]~~ or leasing~~[-]~~ or chartering.

132 (3) "Carrying passengers for hire" means to transport persons on vessels or to lead
133 persons on vessels for consideration.

134 (4) "Consideration" means something of value given or done in exchange for something
135 given or done by another.

136 (5) "Dealer" means any person who is licensed by the appropriate authority to engage in
137 and who is engaged in the business of buying and selling vessels or of manufacturing them for
138 sale.

139 (6) "Division" means the Division of Parks and Recreation.

140 (7) "Motorboat" means any vessel propelled by machinery, whether or not the
141 machinery is the principal source of propulsion.

- 142 (8) "Operate" means to navigate, control, or otherwise use a vessel.
- 143 (9) "Operator" means the person who is in control of a vessel while it is in use.
- 144 (10) "Outfitting company" means any person who, for consideration:
- 145 (a) provides equipment to transport persons on [~~rivers~~] all waters of this state; and
- 146 (b) supervises [~~guides~~] a person who [~~operate vessels~~];
- 147 (i) operates a vessel to transport passengers; or [~~to lead persons on vessels.~~]
- 148 (ii) leads a person on a vessel.
- 149 (11) (a) "Owner" means a person, other than a lien holder, holding a proprietary interest
- 150 in or the title to a vessel. [~~The term~~]
- 151 (b) "Owner" includes a person entitled to the use or possession of a vessel subject to an
- 152 interest by another person, reserved or created by agreement and securing payment or
- 153 performance of an obligation. [~~The term~~]
- 154 (c) "Owner" does not include a lessee under a lease not intended as security.
- 155 (12) "Personal watercraft" means a motorboat that is:
- 156 (a) less than 16 feet in length;
- 157 (b) propelled by a water jet pump; and
- 158 (c) designed to be operated by a person sitting, standing, or kneeling on the vessel,
- 159 rather than sitting or standing inside the vessel.
- 160 (13) "Sailboat" means any vessel having one or more sails and propelled by wind.
- 161 (14) "Vessel" means every type of watercraft, other than a seaplane on the water, used
- 162 or capable of being used as a means of transportation on water.
- 163 (15) "Wakeless speed" means an operating speed at which the vessel does not create or
- 164 make a wake or white water trailing the vessel. This speed is not in excess of five miles per
- 165 hour.
- 166 (16) "Waters of this state" means any waters within the territorial limits of this state.
- 167 Section 4. Section **73-18-4** is amended to read:
- 168 **73-18-4. Board may promulgate rules and set fees.**
- 169 (1) The board may promulgate rules:

170 (a) creating a uniform waterway marking system which shall be obeyed by all vessel
171 operators;

172 (b) regulating the placement of waterway markers and other permanent or anchored
173 objects on the waters of this state;

174 (c) zoning certain waters of this state for the purpose of prohibiting the operation of
175 vessels or motors for safety and health purposes only; and

176 (d) regulating vessel operators who carry passengers for hire, boat liveryes, and
177 outfitting companies.

178 (2) (a) The board may set fees in accordance with Section 63-38-3.2 for:

179 (i) licensing vessel operators who carry passengers for hire; and

180 (ii) registering;

181 (A) outfitting companies [~~in accordance with Section 63-38-3.2~~]; and

182 (B) boat liveryes.

183 (b) The license and registration fees imposed pursuant to Subsection (2)(a) shall be
184 deposited into the Boating Account created in Section 73-18-22.

185 Section 5. Section **73-18-9** is amended to read:

186 **73-18-9. Exemptions from registration.**

187 Registration under this chapter is not required for any of the following:

188 (1) a motorboat or sailboat that:

189 (a) is already covered by a valid registration issued by its nonresident owner's resident
190 state; and [it]

191 (b) has not been within this state in excess of [~~14~~] 60 days for the calendar year;

192 (2) a motorboat or sailboat from a country other than the United States temporarily
193 using the waters of this state;

194 (3) a motorboat or sailboat whose owner is the United States, a state or subdivision
195 thereof;

196 (4) a ship's lifeboat; or

197 (5) a motorboat or sailboat belonging to a class of vessels which is exempted from

198 registration by the board after the board finds:

199 (a) that the registration of motorboats or sailboats of this class will not materially aid in
200 their identification; and

201 (b) that the United States Coast Guard has a numbering system applicable to the class
202 of motorboats or sailboats to which the motorboat or sailboat in question belongs, and the
203 motorboat or sailboat would also be exempt from numbering if it were subject to federal law.

204 Section 6. Section **73-18-15.1** is amended to read:

205 **73-18-15.1. Vessel navigation and steering laws.**

206 (1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all
207 times to avoid the risk of collision.

208 (2) When the operators of two motorboats approach each other where there is risk of
209 collision, each operator shall alter course to the right and pass on the left side of the other.

210 (3) When the operators of two motorboats are crossing paths and are at risk of a
211 collision, the operator of the vessel which has the other vessel on its right side shall keep out of
212 the way and yield right-of-way if necessary.

213 (4) The operator of any vessel overtaking any other vessel shall keep out of the way of
214 the vessel being overtaken.

215 (5) The operator of a vessel underway shall keep out of the way of a:

- 216 (a) vessel not under command;
- 217 (b) vessel restricted in its ability to maneuver;
- 218 (c) vessel engaged in fishing; and
- 219 (d) sailing vessel.

220 (6) If the operator of one of two vessels is to keep out of the way, the other vessel
221 operator shall maintain his course and speed unless it becomes apparent the other vessel is not
222 taking the appropriate action.

223 (7) In narrow channels an operator of a vessel underway shall keep to the right of the
224 middle of the channel.

225 (8) The operator of a vessel shall proceed at a safe speed at all times so that he can take

226 proper and effective action to avoid collision and be stopped within a distance appropriate to
227 the prevailing circumstances or conditions.

228 (9) (a) When the operators of two sailboats are approaching one another so as to
229 involve risk of collision, one of the operators shall keep out of the way of the other as follows:

230 (i) when each has the wind on a different side, the operator of the vessel which has the
231 wind on the left side shall keep out of the way of the other;

232 (ii) when both have the wind on the same side, the operator of the vessel which is to the
233 windward shall keep out of the way of the vessel which is to leeward; and

234 (iii) if the operator of a vessel with the wind on the left side sees a vessel to windward
235 and cannot determine with certainty whether the other vessel has the wind on the left or on the
236 right side, the operator shall keep out of way of the other vessel.

237 (b) For purposes of this Subsection (9), the windward side shall be the side opposite
238 that on which the mainsail is carried.

239 (10) The operator of any vessel may not exceed a wakeless speed when:

240 (a) within 150 feet of:

241 (i) another vessel;

242 (ii) a person in or floating on the water;

243 (iii) a water skier being towed by another boat;

244 (iv) a water skier that had been towed behind the operator's vessel unless the skier is
245 still surfing or riding in an upright stance on the wake created by the vessel;

246 (v) a water skier that had been towed behind another vessel and the skier is still surfing
247 or riding in an upright stance on the wake created by the other vessel;

248 [~~(iv)~~] (vi) a shore fisherman;

249 [~~(v)~~] (vii) a launching ramp;

250 [~~(vi)~~] (viii) a dock; or

251 [~~(vii)~~] (ix) a designated swimming area; or

252 (b) in an area designated as a wakeless speed area.

253 (11) The operator of a motorboat is responsible for any damage or injury caused by the

254 wake produced by the operator's motorboat.

255 (12) (a) Except as provided in Subsection (12)(b), the operator of a motorboat that is
256 less than 65 feet in length may not exceed a wakeless speed while any person is riding upon the
257 bow decking, gunwales, transom, seatbacks, or motor cover.

258 (b) Subsection (12)(a) does not apply if the motorboat is:

259 (i) between 16 feet and 65 feet in length; and

260 (ii) the motorboat is equipped with adequate rails or other safeguards to prevent a
261 person from falling overboard.

262 (13) If a person is riding upon the bow decking of a motorboat which does not have
263 designed seating for passengers, the person shall straddle one of the upright supports of the bow
264 rail and may not block the vision of the operator.

265 (14) The operator of a vessel may not tow a water skier or a person on another device:

266 (a) unless an onboard observer, who is at least eight years of age, is designated by the
267 operator to watch the person being towed; or

268 (b) between sunset and sunrise.

269 (15) The operator of a vessel being operated between sunset and sunrise shall display
270 lighted navigation lights approved by the division.

271 (16) A person who violates this section is guilty of a class C misdemeanor.

272 Section 7. Section **73-18-15.2** is amended to read:

273 **73-18-15.2. Minimum age of operators -- Boating safety course for youth to**
274 **operate personal watercraft.**

275 (1) (a) A person under 16 years of age may not operate a motorboat on the waters of
276 this state unless the person is under the on-board and direct supervision of a person who is at
277 least 18 years of age.

278 (b) A person under 16 years of age may operate a sailboat, if the person is under the
279 direct supervision of a person who is at least 18 years of age.

280 (2) A person who is at least 12 years of age or older but under 16 years of age may
281 operate a personal watercraft provided he:

282 (a) is under the direct supervision of a person who is at least 18 years of age;
283 (b) completes a boating safety course approved by the division; and
284 (c) has in his possession a boating safety certificate issued by the boating safety course
285 provider.

286 (3) A person who is at least 16 years of age but under 18 years of age may operate a
287 personal watercraft, if the person:

288 (a) completes a boating safety course approved by the division; and
289 (b) has in his possession a boating safety certificate issued by the boating safety course
290 provider.

291 (4) A person required to attend a boating safety course under Subsection (3)(a) need
292 not be accompanied by a parent or legal guardian while completing a boating safety course.

293 (5) A person may not give permission to another person to operate a vessel in violation
294 of this section.

295 (6) As used in this section, "direct supervision" means oversight at a distance within
296 which visual contact is maintained.

297 (7) (a) The division may collect [~~a fee not to exceed \$12~~] fees set by the board in
298 accordance with Section 63-38-3.2 from each person who takes the division's boating safety
299 course to help defray the cost of the boating safety course.

300 (b) Money collected from the [~~fee~~] fees collected under Subsection (7)(a) shall be
301 deposited in the Boating Account.