

DEPARTMENT OF NATURAL RESOURCES

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill amends provisions related to the Department of Natural Resources and its powers and duties.

Highlighted Provisions:

This bill:

- ▶ ~~H→ [—provides that a part-time volunteer may be a conservation officer;]~~ ←H
- ▶ reduces the age requirement for a falconry license from 14 years of age to 12 years of age;
- ▶ addresses the use and possession of alcohol while boating;
- ▶ removes duplicate requirements concerning:
 - operation of a boat at wakeless speed; and
 - navigation lights on boats;
- ▶ changes the calculation and use of user fees on golf courses located in state parks;
- ▶ changes the membership of the Recreational Trails Advisory Council; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

H.B. 240



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **23-13-2**, as last amended by Laws of Utah 2008, Chapter 69
- 31 **23-19-34.5**, as last amended by Laws of Utah 2007, Chapter 187
- 32 **23-19-34.7**, as last amended by Laws of Utah 2001, Chapter 22
- 33 **41-6a-526**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 34 **73-18-8**, as last amended by Laws of Utah 1995, Chapter 112
- 35 **73-18-15.1**, as last amended by Laws of Utah 2008, Chapter 94
- 36 **79-4-403**, as renumbered and amended by Laws of Utah 2009, Chapter 344
- 37 **79-5-202**, as renumbered and amended by Laws of Utah 2009, Chapter 344



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

40 Section 1. Section **23-13-2** is amended to read:

41 **23-13-2. Definitions.**

42 As used in this title:

43 (1) "Activity regulated under this title" means any act, attempted act, or activity
44 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or
45 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

- 46 (a) fishing;
- 47 (b) hunting;
- 48 (c) trapping;
- 49 (d) taking;
- 50 (e) permitting any dog, falcon, or other domesticated animal to take;
- 51 (f) transporting;
- 52 (g) possessing;
- 53 (h) selling;
- 54 (i) wasting;
- 55 (j) importing;
- 56 (k) exporting;
- 57 (l) rearing;
- 58 (m) keeping;

- 59 (n) utilizing as a commercial venture; and
- 60 (o) releasing to the wild.
- 61 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.
- 62 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or
- 63 amphibians.
- 64 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.
- 65 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
- 66 that one person may legally take during one day.
- 67 (6) "Big game" means species of hoofed protected wildlife.
- 68 (7) "Carcass" means the dead body of an animal or its parts.
- 69 (8) "Certificate of registration" means a document issued under this title, or any rule or
- 70 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
- 71 license, permit, or tag.
- 72 (9) "Closed season" means the period of time during which the taking of protected
- 73 wildlife is prohibited.
- 74 (10) "Conservation officer" means a ~~full-time~~ [f] full-time, [j] ~~permanent~~ permanent employee
- 74a ~~of~~ [or volunteer] ~~of~~ of
- 75 the Division of Wildlife Resources who is POST certified as a peace or a special function
- 76 officer.
- 77 (11) "Dedicated hunter program" means a program that provides:
- 78 (a) expanded hunting opportunities;
- 79 (b) opportunities to participate in projects that are beneficial to wildlife; and
- 80 (c) education in hunter ethics and wildlife management principles.
- 81 (12) "Division" means the Division of Wildlife Resources.
- 82 (13) (a) "Domicile" means the place:
- 83 (i) where an individual has a fixed permanent home and principal establishment;
- 84 (ii) to which the individual if absent, intends to return; and
- 85 (iii) in which the individual, and the individual's family voluntarily reside, not for a
- 86 special or temporary purpose, but with the intention of making a permanent home.
- 87 (b) To create a new domicile an individual must:
- 88 (i) abandon the old domicile; and
- 89 (ii) be able to prove that a new domicile has been established.

90 (14) "Endangered" means wildlife designated as [~~such~~] endangered according to
91 Section 3 of the federal Endangered Species Act of 1973.

92 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

93 (16) "Feral" means an animal [~~which~~] that is normally domesticated but has reverted to
94 the wild.

95 (17) "Fishing" means to take fish or crayfish by any means.

96 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and
97 Castoridae families, except coyote and cougar.

98 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for
99 human use.

100 (20) [~~(a)~~] "Guide" means a person who receives compensation or advertises services
101 for assisting another person to take protected wildlife [~~-(b) Assistance under Subsection (20)(a)~~
102 ~~includes~~], including the provision of food, shelter, or transportation, or any combination of
103 these.

104 (21) "Guide's agent" means a person who is employed by a guide to assist another
105 person to take protected wildlife.

106 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any
107 means.

108 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or
109 diminish the efforts of an officer in the performance of the officer's duty.

110 (24) "Nonresident" means a person who does not qualify as a resident.

111 (25) "Open season" means the period of time during which protected wildlife may be
112 legally taken.

113 (26) "Pecuniary gain" means the acquisition of money or something of monetary value.

114 (27) "Permit" means a document, including a stamp, [~~which~~] that grants authority to
115 engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

116 (28) "Person" means an individual, association, partnership, government agency,
117 corporation, or an agent of the foregoing.

118 (29) "Possession" means actual or constructive possession.

119 (30) "Possession limit" means the number of bag limits one individual may legally
120 possess.

121 (31) (a) "Private fish pond" means a body of water where privately owned, protected
122 aquatic wildlife are propagated or kept for a noncommercial purpose.

123 (b) "Private fish pond" does not include [~~any~~] an aquaculture facility or fee fishing
124 facility.

125 (32) "Private wildlife farm" means an enclosed place where privately owned birds or
126 furbearers are propagated or kept and that restricts the birds or furbearers from:

127 (a) commingling with wild birds or furbearers; and

128 (b) escaping into the wild.

129 (33) "Proclamation" means the publication used to convey a statute, rule, policy, or
130 pertinent information as it relates to wildlife.

131 (34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection
132 (3), except as provided in Subsection (34)(b).

133 (b) "Protected aquatic wildlife" does not include aquatic insects.

134 (35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as
135 provided in Subsection (35)(b).

136 (b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel,
137 jack rabbit, muskrat, and raccoon.

138 (36) "Released to the wild" means to be turned loose from confinement.

139 (37) (a) "Resident" means a person who:

140 (i) has been domiciled in the state for six consecutive months immediately preceding
141 the purchase of a license; and

142 (ii) does not claim residency for hunting, fishing, or trapping in any other state or
143 country.

144 (b) A Utah resident retains Utah residency if that person leaves this state:

145 (i) to serve in the armed forces of the United States or for religious or educational
146 purposes; and

147 (ii) the person complies with Subsection (37)(a)(ii).

148 (c) (i) A member of the armed forces of the United States and dependents are residents
149 for the purposes of this chapter as of the date the member reports for duty under assigned
150 orders in the state if the member:

151 (A) is not on temporary duty in this state; and

152 (B) complies with Subsection (37)(a)(ii).

153 (ii) A copy of the assignment orders must be presented to a wildlife division office to
154 verify the member's qualification as a resident.

155 (d) A nonresident attending an institution of higher learning in this state as a full-time
156 student may qualify as a resident for purposes of this chapter if the student:

157 (i) has been present in this state for 60 consecutive days immediately preceding the
158 purchase of the license; and

159 (ii) complies with Subsection (37)(a)(ii).

160 (e) A Utah resident license is invalid if a resident license for hunting, fishing, or
161 trapping is purchased in any other state or country.

162 (f) An absentee landowner paying property tax on land in Utah does not qualify as a
163 resident.

164 (38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of
165 selling, bartering, exchanging, or trading.

166 (39) "Small game" means species of protected wildlife:

167 (a) commonly pursued for sporting purposes; and

168 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,
169 cougar, and bear.

170 (40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for
171 human consumption.

172 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or
173 other artificial light on any highway or in any field, woodland, or forest while having in
174 possession a weapon by which protected wildlife may be killed.

175 (42) "Tag" means a card, label, or other identification device issued for attachment to
176 the carcass of protected wildlife.

177 (43) "Take" means to:

178 (a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected
179 wildlife; or

180 (b) attempt any action referred to in Subsection (43)(a).

181 (44) "Threatened" means wildlife designated as such pursuant to Section 3 of the
182 federal Endangered Species Act of 1973.

- 183 (45) "Trapping" means taking protected wildlife with a trapping device.
- 184 (46) "Trophy animal" means an animal described as follows:
- 185 (a) deer - [~~any~~] a buck with an outside antler measurement of 24 inches or greater;
- 186 (b) elk - [~~any~~] a bull with six points on at least one side;
- 187 (c) bighorn, desert, or rocky mountain sheep - [~~any~~] a ram with a curl exceeding half
- 188 curl;
- 189 (d) moose - [~~any~~] a bull with at least one antler exceeding five inches in length;
- 190 (e) mountain goat - [~~any~~] a male or female;
- 191 (f) pronghorn antelope - [~~any~~] a buck with horns exceeding 14 inches; or
- 192 (g) bison - [~~any~~] a bull.

193 (47) "Waste" means to abandon protected wildlife or to allow protected wildlife to

194 spoil or to be used in a manner not normally associated with its beneficial use.

195 (48) "Water pollution" means the introduction of matter or thermal energy to waters

196 within this state [~~which~~] that:

- 197 (a) exceeds state water quality standards; or
- 198 (b) could be harmful to protected wildlife.
- 199 (49) "Wildlife" means:
- 200 (a) crustaceans, including brine shrimp and crayfish;
- 201 (b) mollusks; and
- 202 (c) vertebrate animals living in nature, except feral animals.

203 Section 2. Section **23-19-34.5** is amended to read:

204 **23-19-34.5. Falconry certificate of registration -- Residents 12 or older may**

205 **obtain certificate of registration -- License for falconry meet for nonresidents -- Wildlife**

206 **Board approval required for falconry meet -- Hunting license required to take protected**

207 **game.**

208 (1) [~~Any~~] A resident [~~14~~] 12 years of age or older, upon application to the division,

209 may obtain a certificate of registration to hold falcons and engage in the sport of falconry on

210 nongame wildlife species.

211 (2) A nonresident entering Utah to participate in the sport of falconry at an organized

212 meet shall obtain a license as provided in Section 23-19-34.7.

213 (3) Organizers of a falconry meet [~~must~~] shall apply to and receive approval from the

214 Wildlife Board in order to conduct an organized falconry meet.

215 (4) (a) Any person engaging in the sport of falconry on protected small game species
216 shall possess, in addition to the falconry certificate of registration, a hunting license.

217 (b) Any nonresident who has been issued a license pursuant to Section 23-19-34.7 is
218 not required to possess a hunting license in order to take small game during the five-day period
219 of the license.

220 Section 3. Section **23-19-34.7** is amended to read:

221 **23-19-34.7. Nonresident falconry meet license.**

222 (1) A nonresident [~~14~~] 12 years of age or older may participate in a falconry meet in
223 this state upon payment of a fee prescribed by the Wildlife Board.

224 (2) (a) A nonresident falconry meet license [~~shall be~~] is valid only for five consecutive
225 days, the dates to be designated on the license.

226 (b) The holder of the license may engage in the sport of falconry on nongame wildlife
227 species and small game species, during the specified five-day period.

228 Section 4. Section **41-6a-526** is amended to read:

229 **41-6a-526. Drinking alcoholic beverage and open containers in motor vehicle**
230 **prohibited -- Definitions -- Exceptions.**

231 (1) As used in this section:

232 (a) "Alcoholic beverage" has the same meaning as defined in Section 32A-1-105.

233 (b) "Chartered bus" has the same meaning as defined in Section 32A-1-105.

234 (c) "Limousine" has the same meaning as defined in Section 32A-1-105.

235 (d) (i) "Passenger compartment" means the area of the vehicle normally occupied by
236 the operator and passengers.

237 (ii) "Passenger compartment" includes areas accessible to the operator and passengers
238 while traveling, including a utility or glove compartment.

239 (iii) "Passenger compartment" does not include a separate front or rear trunk
240 compartment or other area of the vehicle not accessible to the operator or passengers while
241 inside the vehicle.

242 (e) "Waters of the state" has the same meaning as defined in Section 73-18-2.

243 (2) A person may not drink any alcoholic beverage while operating a motor vehicle or
244 while a passenger in a motor vehicle, whether the vehicle is moving, stopped, or parked on any

245 highway or waters of the state.

246 (3) A person may not keep, carry, possess, transport, or allow another to keep, carry,
247 possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on
248 any highway or waters of the state, any container which contains any alcoholic beverage if the
249 container has been opened, its seal broken, or the contents of the container partially consumed.

250 (4) Subsections (2) and (3) do not apply to a passenger:

251 (a) in the living quarters of a motor home or camper;

252 (b) who has carried an alcoholic beverage onto a limousine or chartered bus that is in
253 compliance with Subsections 32A-12-213(3)(b) and (c); or

254 (c) in a motorboat [~~or~~] on the waters of [~~this~~] the state [~~as these terms are defined in~~
255 ~~Section 73-18-2~~].

256 (5) Subsection (3) does not apply to passengers traveling in any licensed taxicab or bus.

257 Section 5. Section **73-18-8** is amended to read:

258 **73-18-8. Safety equipment required to be on board vessels.**

259 (1) (a) Except as provided in Subsection (1)(c), each vessel shall have, for each person
260 on board, one personal flotation device [~~which~~] that is approved for the type of use by the
261 commandant of the United States Coast Guard.

262 (b) Each personal flotation device shall be:

263 (i) in serviceable condition;

264 (ii) legally marked with the United States Coast Guard approval number; and

265 (iii) of an appropriate size for the person for whom it is intended.

266 (c) (i) Sailboards are exempt from the provisions of Subsection (1)(a).

267 (ii) The board may exempt certain types of vessels from the provisions of Subsection
268 (1)(a) under certain conditions or upon certain waters.

269 (d) The board may require by rule for personal flotation devices to be worn:

270 (i) while a person is on board a certain type of vessel;

271 (ii) by a person under a certain age; or

272 (iii) on certain waters of the state.

273 (e) For vessels 16 feet or more in length, there shall also be on board, one Type IV
274 throwable personal flotation device which is approved for this use by the commandant of the
275 United States Coast Guard.

276 (2) ~~[Each vessel shall display navigation lights when the vessel is on the waters of this~~
277 ~~state between sunset and sunrise.]~~ The operator of a vessel operated between sunset and sunrise
278 shall display lighted navigation lights approved by the division.

279 (3) If a vessel is not entirely open and it carries or uses any flammable or toxic fluid in
280 any enclosure for any purpose, the vessel ~~[must]~~ shall be equipped with an efficient natural or
281 mechanical ventilation system ~~[which]~~ that is capable of removing resulting gases ~~[prior to]~~
282 before and during the time the vessel is occupied by any person.

283 (4) Each vessel shall have fire extinguishing equipment on board.

284 (5) Any inboard gasoline engine shall be equipped with a carburetor backfire flame
285 control device.

286 (6) The board may:

287 (a) require additional safety equipment by rule; and

288 (b) adopt rules conforming with the requirements of this section which govern
289 specifications for and the use of safety equipment.

290 (7) A person may not operate or give permission for the operation of a vessel ~~[which]~~
291 that is not equipped as required by this section or rules promulgated under this section.

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

293 **73-18-15.1. Vessel navigation and steering laws.**

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

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

298 (3) When the operators of two motorboats are crossing paths and are at risk of a
299 collision, the operator of the vessel ~~[which]~~ that has the other vessel on its right side shall keep
300 out of the way and yield right-of-way if necessary.

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

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

304 (a) vessel not under command;

305 (b) vessel restricted in its ability to maneuver;

306 (c) vessel engaged in fishing; and

307 (d) sailing vessel.

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

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

313 (8) The operator of a vessel shall proceed at a safe speed at all times so that ~~he~~ the
314 operator can take proper and effective action to avoid collision and be stopped within a
315 distance appropriate to the prevailing circumstances or conditions.

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

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

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

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

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

327 (10) The operator of any vessel may not exceed a wakeless speed when~~[-(a)]~~ within
328 150 feet of:

329 ~~[(i)]~~ (a) another vessel;

330 ~~[(ii)]~~ (b) a person in or floating on the water;

331 ~~[(iii)]~~ (c) a water skier being towed by another boat;

332 ~~[(iv)]~~ (d) a water skier that had been towed behind the operator's vessel unless the skier
333 is still surfing or riding in an upright stance on the wake created by the vessel;

334 ~~[(v)]~~ (e) a water skier that had been towed behind another vessel and the skier is still
335 surfing or riding in an upright stance on the wake created by the other vessel;

336 ~~[(vi)]~~ (f) a shore fisherman;

337 ~~[(vii)]~~ (g) a launching ramp;

338 [~~(viii)~~] (h) a dock; or

339 [~~(ix)~~] (i) a designated swimming area~~[-or]~~.

340 [~~(b) in an area designated as a wakeless speed area.]~~

341 (11) The operator of a motorboat is responsible for any damage or injury caused by the
342 wake produced by the operator's motorboat.

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

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

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

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

350 (13) If a person is riding upon the bow decking of a motorboat [~~which~~] that does not
351 have designed seating for passengers, the person shall straddle one of the upright supports of
352 the bow rail and may not block the vision of the operator.

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

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

356 (b) between sunset and sunrise.

357 [~~(15) The operator of a vessel being operated between sunset and sunrise shall display~~
358 ~~lighted navigation lights approved by the division.]~~

359 [~~(16)~~] (15) A person who violates this section is guilty of a class C misdemeanor.

360 Section 7. Section **79-4-403** is amended to read:

361 **79-4-403. User fees for golf -- Wasatch Mountain, Palisade, and**

361a **↳ [Jordan] Green ← River**
362 **State Parks.**

363 (1) The following user fees are assessed in the following parks for playing nine holes
364 of golf:

365 (a) [~~\$1.50~~] 15% of the green fees at Wasatch Mountain State Park;

366 (b) [~~\$1.50~~] 15% of the green fees at Palisade State Park; and

367 (c) [~~\$1.50~~] 15% of the green fees at Green River State Park.

368 (2) The fee in Subsection (1) is:

- 369 (a) in addition to the fee set by the board; and
- 370 (b) to be used at the park where the money is collected for:
- 371 (i) the upgrade or development of facilities; or
- 372 (ii) the purchase of golf course operation and maintenance equipment and operating
- 373 supplies or materials.

374 (3) The revenue from the fees established in Subsection (1) are nonlapsing.

375 Section 8. Section **79-5-202** is amended to read:

376 **79-5-202. Council membership -- Expenses.**

377 (1) The council shall consist of [~~nine~~] 10 members knowledgeable about
378 muscle-powered recreational activities as follows:

- 379 (a) five members shall represent the public at large;
- 380 (b) one member, nominated by the Utah League of Cities and Towns, shall represent
- 381 city government;
- 382 (c) one member, nominated by the Utah Association of Counties, shall represent
- 383 county government;
- 384 (d) one member shall represent the United States Forest Service; [~~and~~]
- 385 (e) one member shall represent the Bureau of Land Management[~~;~~]; and
- 386 (f) one member shall represent the National Park Service's River, Trails, and

387 Conservation Assistance Program.

388 (2) (a) Except as required by Subsection (2)(b), as terms of current council members
389 expire, the division shall appoint each new member or reappointed member to a four-year term.

390 (b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the
391 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
392 council members are staggered so that approximately half of the council is appointed every two
393 years.

394 (3) The council shall elect annually a chair and a vice chair from its members.

395 (4) When a vacancy occurs in the membership for any reason, the division shall
396 appoint the replacement for the unexpired term.

397 (5) (a) (i) A member who is not a government employee may not receive compensation
398 or benefits for the member's service, but may receive per diem and expenses incurred in the
399 performance of the member's official duties at the rates established by the Division of Finance

400 under Sections 63A-3-106 and 63A-3-107.

401 (ii) A member may decline to receive per diem and expenses for the member's service.

402 (b) (i) A state government officer and employee member who does not receive salary,
403 per diem, or expenses from the agency the member represents for the member's service may
404 receive per diem and expenses incurred in the performance of the member's official duties at
405 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

406 (ii) A state government officer and employee member may decline to receive per diem
407 and expenses for the member's service.

408 (c) (i) A local government member who does not receive salary, per diem, or expenses
409 from the entity that the member represents for the member's service may receive per diem and
410 expenses incurred in the performance of the member's official duties at the rates established by
411 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

412 (ii) A local government member may decline to receive per diem and expenses for the
413 member's service.

Legislative Review Note
as of 1-21-10 5:31 PM

Office of Legislative Research and General Counsel