

BOATING AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Ronda Rudd Menlove

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the State Boating Act by amending provisions relating to vessels and outboard motors.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
 - ▶ includes vessels and outboard motors in the motor vehicle provisions that regulate abandoned vehicles;
 - ▶ grants the Board of Parks and Recreation rulemaking authority to make rules establishing regulations for anchored, beached, moored, and abandoned vessels;
 - ▶ repeals the requirement that a motorboat registration that has been revoked may not be renewed for one year and specifies the requirements for a motorboat registration to be renewed after a revocation;
 - ▶ provides that a compromise of certain boating violations shall be done pursuant to a plea in abeyance agreement;
 - ▶ specifies procedures and fee requirements for a compromise of boating violations;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **41-1a-1009**, as last amended by Laws of Utah 1999, Chapter 217

33 **41-6a-1408**, as renumbered and amended by Laws of Utah 2005, Chapter 2

34 **73-18-2**, as last amended by Laws of Utah 2008, Chapter 94

35 **73-18-4**, as last amended by Laws of Utah 2009, Chapter 183

36 **73-18-13.5**, as last amended by Laws of Utah 2008, Chapter 382

37 **73-18-13.6**, as enacted by Laws of Utah 1997, Chapter 348

38 **73-18c-304**, as last amended by Laws of Utah 2006, Chapter 211

39 ENACTS:

40 **77-2-4.3**, Utah Code Annotated 1953



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

43 Section 1. Section **41-1a-1009** is amended to read:

44 **41-1a-1009. Abandoned and inoperable vehicles, vessels, and outboard motors --**

45 **Determination by commission -- Disposal of vehicles.**

46 (1) A vehicle, vessel, or outboard motor is abandoned and inoperable when:

47 (a) the vehicle, vessel, or outboard motor has been inspected by an authorized
48 investigator or agent appointed by the commission; and

49 (b) the authorized investigator or agent has made a written determination that the
50 vehicle, vessel, or outboard motor cannot be rebuilt or reconstructed in a manner that allows its
51 use as designed by the manufacturer or is a derelict vessel as defined in Section 73-18-2.

52 (2) (a) Before issuing a written determination under Subsection (1), a signed statement
53 is required from the purchaser of the vehicle, vessel, or outboard motor for salvage, identifying
54 the vehicle, vessel, or outboard motor by identification number and certifying that the
55 inoperable vehicle, vessel, or outboard motor will not be rebuilt, reconstructed, or in any
56 manner allowed to operate as designed by the manufacturer.

57 (b) The operator of the junk or salvage yard disposing of an inoperable vehicle, vessel,

58 or outboard motor is required to keep copies of the signed statements and other written records
59 required by the commission.

60 (3) Upon a determination that a vehicle, vessel, or outboard motor is inoperable and
61 cannot be rebuilt or reconstructed, the vehicle, vessel, or outboard motor may be converted to
62 scrap or otherwise disposed of without necessity of compliance with the requirements of
63 Sections 41-1a-1010 and 41-1a-1011.

64 Section 2. Section **41-6a-1408** is amended to read:

65 **41-6a-1408. Abandoned vehicles -- Removal by peace officer -- Report -- Vehicle**
66 **identification.**

67 (1) As used in this section, "abandoned vehicle, vessel, or outboard motor" means a
68 vehicle, vessel, or outboard motor that is left unattended:

69 (a) on a highway or on or in the waters of the state for a period in excess of 48 hours;
70 or

71 (b) on public or private property for a period in excess of seven days without express or
72 implied consent of the owner or person in lawful possession or control of the property.

73 (2) A person may not abandon a vehicle, vessel, or outboard motor on a highway or on
74 or in the waters of the state.

75 (3) A person may not abandon a vehicle, vessel, or outboard motor on public or private
76 property without the express or implied consent of the owner or person in lawful possession or
77 control of the property.

78 (4) A peace officer who has reasonable grounds to believe that a vehicle, vessel, or
79 outboard motor has been abandoned may remove the vehicle, vessel, or outboard motor or
80 cause it to be removed in accordance with Section 41-6a-1406 or 73-18-20.1.

81 (5) If the motor number, manufacturer's number or identification mark of the
82 abandoned vehicle, vessel, or outboard motor has been defaced, altered or obliterated, the
83 vehicle, vessel, or outboard motor may not be released or sold until:

84 (a) the original motor number, manufacturer's number or identification mark has been
85 replaced; or

86 (b) a new number assigned by the Motor Vehicle Division has been stamped on the
87 vehicle, vessel, or outboard motor.

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

89 **73-18-2. Definitions.**

90 As used in this chapter:

91 (1) "Anchored" means a vessel that is temporarily attached to the bed or shoreline of a
92 waterbody by any method and the hull of the vessel is not touching the bed or shoreline.

93 (2) "Beached" means that a vessel's hull is resting on the bed or shoreline of a
94 waterbody.

95 [~~1~~] (3) "Board" means the Board of Parks and Recreation.

96 [~~2~~] (4) "Boat livery" means a person that holds a vessel for renting or leasing.

97 [~~3~~] (5) "Carrying passengers for hire" means to transport persons on vessels or to lead
98 persons on vessels for consideration.

99 [~~4~~] (6) "Consideration" means something of value given or done in exchange for
100 something given or done by another.

101 [~~5~~] (7) "Dealer" means any person who is licensed by the appropriate authority to
102 engage in and who is engaged in the business of buying and selling vessels or of manufacturing
103 them for sale.

104 (8) "Derelict vessel":

105 (a) means a vessel that is left, stored, or abandoned upon the waters of this state in a
106 wrecked, junked, or substantially dismantled condition; and

107 (b) includes:

108 (i) a vessel left at a Utah port or marina without consent of the agency or other entity
109 administering the port or marine area; and

110 (ii) a vessel left docked or grounded upon a property without the property owner's
111 consent.

112 [~~6~~] (9) "Division" means the Division of Parks and Recreation.

113 (10) "Moored" means long term, on the water vessel storage in an area designated and

114 properly marked by the division or other applicable managing agency.

115 [~~(7)~~] (11) "Motorboat" means any vessel propelled by machinery, whether or not the
116 machinery is the principal source of propulsion.

117 [~~(8)~~] (12) "Operate" means to navigate, control, or otherwise use a vessel.

118 [~~(9)~~] (13) "Operator" means the person who is in control of a vessel while it is in use.

119 [~~(10)~~] (14) "Outfitting company" means any person who, for consideration:

120 (a) provides equipment to transport persons on all waters of this state; and

121 (b) supervises a person who:

122 (i) operates a vessel to transport passengers; or

123 (ii) leads a person on a vessel.

124 [~~(11)~~] (15) (a) "Owner" means a person, other than a lien holder, holding a proprietary
125 interest in or the title to a vessel.

126 (b) "Owner" includes a person entitled to the use or possession of a vessel subject to an
127 interest by another person, reserved or created by agreement and securing payment or
128 performance of an obligation.

129 (c) "Owner" does not include a lessee under a lease not intended as security.

130 [~~(12)~~] (16) "Personal watercraft" means a motorboat that is:

131 (a) less than 16 feet in length;

132 (b) propelled by a water jet pump; and

133 (c) designed to be operated by a person sitting, standing, or kneeling on the vessel,
134 rather than sitting or standing inside the vessel.

135 [~~(13)~~] (17) "Sailboat" means any vessel having one or more sails and propelled by
136 wind.

137 [~~(14)~~] (18) "Vessel" means every type of watercraft, other than a seaplane on the water,
138 used or capable of being used as a means of transportation on water.

139 [~~(15)~~] (19) "Wakeless speed" means an operating speed at which the vessel does not
140 create or make a wake or white water trailing the vessel. This speed is not in excess of five
141 miles per hour.

142 [~~(16)~~] (20) "Waters of this state" means any waters within the territorial limits of this
143 state.

144 Section 4. Section 73-18-4 is amended to read:

145 **73-18-4. Board may promulgate rules and set fees.**

146 (1) [~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
147 Act, the board [may] shall promulgate rules:

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

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

152 (c) zoning certain waters of this state for the purpose of prohibiting the operation of
153 vessels or motors for safety and health purposes only; [~~and~~]

154 (d) regulating vessel operators who carry passengers for hire, boat liveries, and
155 outfitting companies; and

156 (e) regulating anchored, beached, moored, or abandoned vessels to minimize health,
157 safety, and environmental concerns.

158 (2) (a) The board may set fees in accordance with Section 63J-1-504 for:

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

160 (ii) registering:

161 (A) outfitting companies; and

162 (B) boat liveries.

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

165 Section 5. Section 73-18-13.5 is amended to read:

166 **73-18-13.5. Motorboat accidents -- Investigation and report of operator security**
167 **-- Agency action if no security -- Surrender of registration materials.**

168 (1) Upon request of a peace officer investigating an accident involving a motorboat as
169 defined in Section 73-18c-102, the operator of the motorboat shall provide evidence of the

170 owner's or operator's security required under Section 73-18c-301.

171 (2) The peace officer shall record on a form approved by the division:

172 (a) the information provided by the operator;

173 (b) whether the operator provided insufficient or no information; and

174 (c) whether the peace officer finds reasonable cause to believe that any information
175 given is not correct.

176 (3) The peace officer shall deposit all completed forms with the peace officer's agency,
177 which shall forward the forms to the division no later than 10 days after receipt.

178 (4) (a) The division shall revoke the registration of a motorboat as defined in Section
179 73-18c-102 involved in an accident unless the owner or operator can demonstrate to the
180 division compliance with the owner's or operator's security requirement of Section 73-18c-301
181 at the time of the accident.

182 (b) Any registration revoked [~~may not be renewed for a period of one year following~~
183 ~~the date of revocation~~] shall be renewed in accordance with Section 73-18-7.

184 (5) A person may appeal a revocation issued under Subsection (4) in accordance with
185 procedures established by the board by rule that are consistent with Title 63G, Chapter 4,
186 Administrative Procedures Act.

187 (6) (a) Any person whose registration is revoked under Subsection (4) shall return the
188 registration card and decals for the motorboat to the division.

189 (b) If the person fails to return the registration materials as required, they shall be
190 confiscated under Section 73-18-13.6.

191 (7) The board may make rules for the enforcement of this section.

192 (8) In this section, "evidence of owner's or operator's security" includes any one of the
193 following:

194 (a) the operator's:

195 (i) insurance policy;

196 (ii) binder notice;

197 (iii) renewal notice; or

- 198 (iv) card issued by an insurance company as evidence of insurance;
- 199 (b) a copy of a surety bond, certified by the surety, which conforms to Section
- 200 73-18c-102;
- 201 (c) a certificate of the state treasurer issued under Section 73-18c-305; or
- 202 (d) a certificate of self-funded coverage issued under Section 73-18c-306.

203 Section 6. Section **73-18-13.6** is amended to read:

204 **73-18-13.6. Grounds for confiscation of registration materials by state --**
 205 **Registration renewal.**

206 (1) (a) The division, any peace officer acting in an official capacity, or a person
 207 authorized under Subsection (2) may take possession of any registration card or decal issued by
 208 the state:

- 209 (i) upon revocation of it;
- 210 (ii) that is fictitious;
- 211 (iii) that has been unlawfully or erroneously issued; or
- 212 (iv) that is unlawfully or erroneously displayed.

213 (b) A receipt shall be issued that describes each confiscated item.

214 (2) The division may enter into contractual agreements with constables or other law
 215 enforcement agencies to facilitate confiscation of items listed in Subsection (1) if a person fails
 216 or refuses to surrender any of those documents to the division upon demand.

217 ~~[(3) The division shall assess against a person making an application to renew a~~
 218 ~~registration, a fee, which shall be paid before the person's registration is renewed, to cover any~~
 219 ~~costs of confiscating that person's registration materials.]~~

220 (3) The division shall renew a registration that has been revoked under this section in
 221 accordance with the provisions of Section 73-18-7.

222 Section 7. Section **73-18c-304** is amended to read:

223 **73-18c-304. Evidence of owner's or operator's security to be carried when**
 224 **operating motorboat -- Defense -- Penalties.**

225 (1) (a) (i) Except as provided in Subsection (1)(a)(ii), a person operating a motorboat

226 shall:

227 (A) have in the person's immediate possession evidence of owner's or operator's
228 security for the motorboat the person is operating; and

229 (B) display it upon demand of a peace officer.

230 (ii) A person operating a government-owned or government-leased motorboat is
231 exempt from the requirements of Subsection (1)(a)(i).

232 (b) Evidence of owner's or operator's security includes any one of the following:

233 (i) the operator's:

234 (A) insurance policy;

235 (B) binder notice;

236 (C) renewal notice; or

237 (D) card issued by an insurance company as evidence of insurance;

238 (ii) a copy of a surety bond, certified by the surety, which conforms to Section
239 73-18c-102;

240 (iii) a certificate of the state treasurer issued under Section 73-18c-305; or

241 (iv) a certificate of self-funded coverage issued under Section 73-18c-306.

242 (2) It is an affirmative defense to a charge under this section that the person had
243 owner's or operator's security in effect for the motorboat the person was operating at the time of
244 the person's citation or arrest.

245 (3) (a) A letter from an insurance producer or company verifying that the person had
246 the required liability insurance coverage on the date specified is considered proof of owner's or
247 operator's security for purposes of Subsection (2).

248 (b) The court considering a citation issued under this section shall allow the letter
249 under Subsection (3)(a) and a copy of the citation to be faxed or mailed to the clerk of the court
250 to satisfy Subsection (2).

251 (4) A violation of this section is a class B misdemeanor.

252 (5) If a person is convicted of a violation of this section and if the person is the owner
253 of a motorboat, the court shall:

254 (a) require the person to surrender the person's registration materials to the court; and
255 (b) forward the registration materials, together with a copy of the conviction, to the
256 division.

257 (6) (a) Upon receiving notification from a court of a conviction for a violation of this
258 section, the division shall revoke the person's motorboat registration.

259 (b) Any registration revoked [~~may not be renewed for a period of one year following~~
260 ~~the date of revocation~~] shall be renewed in accordance with Section 73-18-7.

261 Section 8. Section 77-2-4.3 is enacted to read:

262 **77-2-4.3. Compromise of boating violations -- Limitations.**

263 (1) As used in this section:

264 (a) "Compromise" means referral of a person charged with a boating violation to a
265 boating safety course approved by the Division of Parks and Recreation.

266 (b) "Boating violation" means any charge for which bail may be forfeited in lieu of
267 appearance, by citation or information, of a violation of Title 73, Chapter 18, State Boating
268 Act, amounting to:

269 (i) a class B misdemeanor;

270 (ii) a class C misdemeanor; or

271 (iii) an infraction.

272 (2) Any compromise of a boating violation shall be done pursuant to a plea in abeyance
273 agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:

274 (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or

275 (b) when there is a plea by the defendant to and entry of a judgment by a court for the
276 offense originally charged or for an amended charge.

277 (3) In all cases which are compromised pursuant to the provisions of Subsection (2):

278 (a) the court, taking into consideration the offense charged, shall collect a plea in
279 abeyance fee which shall:

280 (i) be subject to the same surcharge as if imposed on a criminal fine;

281 (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section

282 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge

283 Allocation; and

284 (iii) be not more than \$25 greater than the bail designated in the Uniform Bail

285 Schedule; or

286 (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the
287 boating safety course shall be collected, which surcharge shall:

288 (i) be computed, assessed, collected, and remitted in the same manner as if the boating
289 safety course fee and surcharge had been imposed as a criminal fine and surcharge; and

290 (ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4,
291 Criminal Conviction Surcharge Allocation.

292 (4) If a written plea in abeyance agreement is provided, or the defendant requests a
293 written accounting, an itemized statement of all amounts assessed by the court shall be
294 provided, including:

295 (a) the Uniform Bail Schedule amount;

296 (b) the amount of any surcharges being assessed; and

297 (c) the amount of the plea in abeyance fee.