

## SB0136S01 compared with SB0136

~~deleted text~~ shows text that was in SB0136 but was deleted in SB0136S01.

inserted text shows text that was not in SB0136 but was inserted into SB0136S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### BOATING AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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#### 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- ▶ repeals the requirement that a motorboat registration that has been revoked may not be renewed for one year and specifies the requirements for a motorboat registration

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to be renewed after a revocation;

- ▶ provides that a ~~{court shall dismiss a fine for a violation under this chapter if:~~

- ~~• the violation was an infraction or a class B or class C misdemeanor; and~~

- ~~• the person provides evidence to the court that the person has completed a boating education course approved by the division within a certain time~~

~~frame}~~ 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

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

~~{ **73-18-15.2**, as last amended by Laws of Utah 2009, Chapter 183~~

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

### ENACTS:

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

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

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

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

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

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

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

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

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

(b) The operator of the junk or salvage yard disposing of an inoperable vehicle, vessel, or outboard motor is required to keep copies of the signed statements and other written records required by the commission.

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

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

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

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

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

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

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

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

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control of the property.

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

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

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

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

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

### **73-18-2. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

(8) "Derelict vessel":

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

(b) includes:

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

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

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

(10) "Moored" means long term, on the water vessel storage in an area designated and properly marked by the division or other applicable managing agency.

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

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

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

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

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

(b) supervises a person who:

(i) operates a vessel to transport passengers; or

(ii) leads a person on a vessel.

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

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

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

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

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) registering:

(A) outfitting companies; and

(B) boat liveries.

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

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

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

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

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

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

(a) the information provided by the operator;

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

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

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

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

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

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

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

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

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

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

(a) the operator's:

(i) insurance policy;

(ii) binder notice;

(iii) renewal notice; or

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

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

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- (c) a certificate of the state treasurer issued under Section 73-18c-305; or
- (d) a certificate of self-funded coverage issued under Section 73-18c-306.

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

### **73-18-13.6. Grounds for confiscation of registration materials by state --**

#### **Additional fee for reinstatement.**

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

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

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

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

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

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

Section 7. Section ~~{73-18-15.2}~~ 73-18c-304 is amended to read:

~~{~~ 73-18-15.2. Minimum age of operators -- Boating safety course for youth to operate personal watercraft.

~~\_\_\_\_\_ (1) As used in this section, "direct supervision" means oversight at a distance within which visual contact is maintained.~~

~~\_\_\_\_\_ [(1)] (2) (a) A person under 16 years of age may not operate a motorboat on the waters of this state unless the person is under the on-board and direct supervision of a person who is at least 18 years of age.~~

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



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~~——— [(2)] (3) A person who is at least 12 years of age or older but under 16 years of age may operate a personal watercraft provided he:~~

~~——— (a) is under the direct supervision of a person who is at least 18 years of age;~~

~~——— (b) completes a boating safety course approved by the division; and~~

~~——— (c) has in his possession a boating safety certificate issued by the boating safety course provider.~~

~~——— [(3)] (4) A person who is at least 16 years of age but under 18 years of age may operate a personal watercraft, if the person:~~

~~——— (a) completes a boating safety course approved by the division; and~~

~~——— (b) has in his possession a boating safety certificate issued by the boating safety course provider.~~

~~——— [(4)] (5) A person required to attend a boating safety course under Subsection [(3)] (4)(a) need not be accompanied by a parent or legal guardian while completing a boating safety course.~~

~~——— [(5)] (6) A person may not give permission to another person to operate a vessel in violation of this section.~~

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

~~——— (7) (a) A court shall dismiss a fine for a violation under this chapter or under rules promulgated under this chapter if:~~

~~——— (i) the violation was an infraction or a class B or class C misdemeanor; and~~

~~——— (ii) the person provides evidence to the court that the person has completed a boating education course approved by the division within 60 days of the charges being filed.~~

~~——— (b) A boating education course taken prior to the date of the citation described in Subsection (7)(a) does not count towards the fine dismissal under Subsection (7)(a).~~

~~——— [(7)] (8) (a) The division may collect fees set by the board in accordance with Section 63J-1-504 from each person who takes the division's boating safety course to help defray the cost of the boating safety course.~~

~~——— (b) Money collected from the fees collected under Subsection [(7)] (8)(a) shall be deposited in the Boating Account.~~

~~——— Section 8. Section ~~73-18c-304~~ is amended to read:~~

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

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

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

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

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

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

(i) the operator's:

(A) insurance policy;

(B) binder notice;

(C) renewal notice; or

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

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

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

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

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

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

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

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

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

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

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

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

†

### Legislative Review Note

~~as of 1-27-11 9:40 AM~~

~~Office of Legislative Research and General Counsel;~~ Section 8. Section 77-2-4.3 is enacted to read:

#### 77-2-4.3. Compromise of boating violations -- Limitations.

(1) As used in this section:

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

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

(i) a class B misdemeanor;

(ii) a class C misdemeanor; or

(iii) an infraction.

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

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

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

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

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

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

(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and

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

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

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

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

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

(a) the Uniform Bail Schedule amount;

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

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