

## SB0063S01 compared with SB0063

~~deleted text~~ shows text that was in SB0063 but was deleted in SB0063S01.

inserted text shows text that was not in SB0063 but was inserted into SB0063S01.

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Senator Scott D. Sandall proposes the following substitute bill:

### RECREATIONAL ACTIVITIES RELATED TO PUBLIC WATERS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. Sandall**

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

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#### LONG TITLE

##### General Description:

This bill addresses recreational activities related to public waters.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies general access provisions, including access related to navigable waters;
- ▶ provides for penalties for trespass in violation of chapter; and
- ▶ makes technical and conforming amendments.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**73-29-102**, as enacted by Laws of Utah 2010, Chapter 410

**73-29-201**, as enacted by Laws of Utah 2010, Chapter 410

**73-29-206**, as enacted by Laws of Utah 2010, Chapter 410

#### ENACTS:

**73-29-104**, Utah Code Annotated 1953

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

Section 1. Section **73-29-102** is amended to read:

#### **73-29-102. Definitions.**

As used in this chapter:

(1) "Bed" means an area within the ordinary high water mark of a public water.

~~[(1)]~~ (2) "Division" means the Division of Wildlife Resources.

~~[(2)]~~ (3) "Floating access" means the right to access public water flowing over private property for floating and fishing while floating upon the water.

(4) "Harass" means:

(a) assault, as defined in Section 76-5-102;~~for~~

(b) an offense against an animal enterprise as described in Section 76-6-110;~~for~~ or

(c) intentionally interfering with and disrupting a lawful recreational activity under Section 73-29-201.

~~[(3)]~~ (5) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth of water, including connecting channels.

~~[(4)]~~ (6) (a) "Navigable water" means a water course that in its natural state without the aid of artificial means is useful for commerce and has a useful capacity as a public highway of transportation.

(b) "Navigable water" includes the Weber River navigable waters.

(7) "Ordinary high water mark" means:

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(a) the line that a water body impresses on the soil:

(i) by covering the soil long enough to ordinarily deprive the soil of terrestrial vegetation; and

(ii) at the level where the water body would normally stand during the high water period when the water body is not affected by a flood or drought; or

(b) the area actually submerged by water that is not flood water in an area where the line of the water body impresses upon the soil as identified in Subsection (7)(a).

~~[(5)]~~ (8) "Private property to which access is restricted" means privately owned real property:

(a) that is cultivated land, as defined in Section 23-20-14;

(b) that is:

(i) properly posted, as defined in Section 23-20-14;

(ii) posted as described in Subsection 76-6-206(2)(b)(iii); or

(iii) posted as described in Subsection 76-6-206.3(2)(c);

(c) that is fenced or enclosed as described in:

(i) Subsection 76-6-206(2)(b)(ii); or

(ii) Subsection 76-6-206.3(2)(b); or

(d) that the owner or a person authorized to act on the owner's behalf has requested a person to leave as provided by:

(i) Section 23-20-14;

(ii) Subsection 76-6-206(2)(b)(i); or

(iii) Subsection 76-6-206.3(2)(a).

~~[(6)]~~ (9) "Public access area" means the limited part of privately owned property that:

(a) lies beneath or within three feet of a public water or that is the most direct, least invasive, and closest means of portage around an obstruction in a public water; ~~[and]~~

(b) is open to public recreational access under Section 73-29-203; and

(c) can be accessed from an adjoining public access area or public right-of-way.

~~[(7)]~~ (10) "Public recreational access" means the right to engage in recreational access established in accordance with Section 73-29-203.

~~[(8)]~~ (11) (a) "Public water" means water:

(i) described in Section 73-1-1; and

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- (ii) flowing or collecting on the surface:
  - (A) within a natural or realigned channel; or
  - (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
- (b) "Public water" does not include water flowing or collecting:
  - (i) on impounded wetland;
  - (ii) on a migratory bird production area, as defined in Section 23-28-102;
  - (iii) on private property in a manmade:
    - (A) irrigation canal;
    - (B) irrigation ditch; or
    - (C) impoundment or reservoir constructed outside of a natural or realigned channel; or
  - (iv) on a jurisdictional wetland described in 33 C.F.R. Sec. 328.3.

~~[(9)]~~ (12) (a) "Recreational access" means to use a public water and to touch a public access area incidental to the use of the public water for:

- (i) floating;
- (ii) fishing; or
- (iii) waterfowl hunting conducted:
  - (A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203, and 76-10-508; and

(B) so that the individual who engages in the waterfowl hunting shoots a firearm only while within a public access area and no closer than 600 feet of any dwelling.

- (b) "Recreational access" does not include:
  - (i) hunting, except as provided in Subsection ~~[(9)]~~ (12)(a)(iii);
  - (ii) wading without engaging in activity described in Subsection ~~[(9)]~~ (12)(a); or
  - (iii) any other activity.

(13) (a) "Recreational activity" means activity that:

- (i) is lawful;
- (ii) is engaged in:
  - (A) for a recreational purpose; or
  - (B) a commercial purpose if an individual is guiding or outfitting another individual

who is engaging in recreational activity;

- (iii) requires use of the water to be effectively enjoyed or accomplished; and

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(iv) actually uses the public water when undertaken.

(b) "Recreational activity" does not include hunting on ~~{public water}~~ Weber River navigable waters by an individual who does not own the adjacent property where the hunting occurs.

(14) "Weber River navigable waters" means the 40 mile section of the Weber River between Holiday Park and Echo Reservoir.

Section 2. Section **73-29-104** is enacted to read:

### **73-29-104. Trespass related to public waters.**

A person who trespasses private property in violation of this chapter is guilty of a class B misdemeanor, subject to the following:

(1) a minimum fine of \$500 for a first offense;

(2) a minimum fine of \$750 for a second offense and loss of access to public waters permitted under this chapter for a time period determined by the court; and

(3) a minimum fine of \$1,000 for a third or subsequent offense and loss of access to public waters permitted under this chapter for a time period determined by the court but at least one year.

Section 3. Section **73-29-201** is amended to read:

### **73-29-201. General access provisions.**

(1) [The] Subject to Subsections (4) and (5), the public may use a public water for a recreational activity if:

(a) the public water:

(i) is a navigable water; or

(ii) is on public property; and

(b) the recreational activity is not otherwise prohibited by law.

(2) A person may access and use a public water on private property for any lawful purpose with the private property owner's permission.

(3) A person may not access or use a public water on private property for a recreational [purposes] activity if the private property is property to which access is restricted, unless subject to Subsections (4) and (5), the public water is a navigable water or unless public recreational access is established under Section 73-29-203.

(4) (a) An individual who does not own the adjacent property may not engage in

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recreational activity on Weber River navigable waters if the recreational activity:

(i) destroys, materially damages, removes, or alters real or personal property, including:

(A) a fence, as provided in Section 4-26-101;

(B) a structure;

(C) diversion works; or

(D) vegetation, soil, or rock other than incidental to ordinary use;

(ii) alters or obstructs water flows;

(iii) involves construction or maintenance of a structure on the bed;

(iv) is undertaken on:

(A) horseback;

(B) a motor vehicle, as defined in Section 41-6a-102;

(C) an off-highway vehicle, as defined in Section 41-22-2; or

(D) a non-motorized wheeled vehicle; or

(v) constitutes hunting.

(b) While engaging in recreational activity on Weber River navigable waters, an individual who does not own the adjacent property may not:

(i) litter in violation of state law;

(ii) destroy or deface public or private property;

(iii) harass livestock; or

(iv) harass a property owner.

(c) An individual may not harass an individual engaged in recreational activity on Weber River navigable waters.

(5) (a) Notwithstanding Section 73-29-207, this Subsection (5) applies to Weber River navigable waters.

(b) The owner of a private land adjacent to Weber River navigable waters may place a fence or obstruction across a public water if the fence or obstruction is placed for a reason other than blocking access for recreational activity.

(c) The owner of a private land adjacent to Weber River navigable waters placing a fence or obstruction across the public water shall construct and maintain the fence or obstruction in a manner:

(i) that does not unreasonably endanger the safety of an individual engaged in

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recreational activity using the public water; and

(ii) consistent with any applicable law or administrative rule.

(d) An individual may not place a fence or other obstruction on a highway or other public right-of-way intersecting Weber River navigable waters unless a gate or other form of passage is provided to allow the public to access the public water from the right-of-way to engage in any recreational activity permitted on the Weber River navigable waters.

Section 4. Section **73-29-206** is amended to read:

### **73-29-206. Effect of chapter on other uses and restrictions -- Required acts.**

(1) [~~Nothing~~] Except as provided in Section 73-29-201, nothing in this chapter affects the right of the public to use public water for public recreational access, including the touching of the bed beneath the public water if:

(a) the bed beneath the public water is public property; or

(b) the bed beneath the public water is private property to which access is not restricted.

(2) A person using a public water for public recreational access is subject to any other restriction lawfully placed on the use of the public water by a governmental entity with authority to restrict the use of the public water.

(3) Nothing in this chapter limits or enlarges any right granted by express easement.

(4) When leaving a public access area, a person shall remove any refuse or tangible personal property the person brought into the public access area.