

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: Timothy D. Hawkes

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;
- ▶ provides that the chapter does not supersede the Division of Forestry, Fire, and State Lands' ownership and management of sovereign lands; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



26 73-29-201, as enacted by Laws of Utah 2010, Chapter 410

27 73-29-206, as enacted by Laws of Utah 2010, Chapter 410

28 ENACTS:

29 73-29-104, Utah Code Annotated 1953



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

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

33 **73-29-102. Definitions.**

34 As used in this chapter:

35 (1) "Bed" means, for purposes of engaging in a recreational activity under this chapter,
36 an area within the high water mark of a public water.

37 [~~(1)~~] (2) "Division" means the Division of Wildlife Resources.

38 [~~(2)~~] (3) "Floating access" means the right to access public water flowing over private
39 property for floating and fishing while floating upon the water.

40 (4) "Harass" means:

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

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

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

45 (5) "High water mark" means the line that a water body impresses on the soil by
46 covering the soil long enough to ordinarily deprive the soil of terrestrial vegetation.

47 [~~(3)~~] (6) "Impounded wetlands" means a wetland or wetland pond that is formed or the
48 level of which is controlled by a dike, berm, or headgate that retains or manages the flow or
49 depth of water, including connecting channels.

50 [~~(4)~~] (7) (a) "Navigable water" means, for purposes of engaging in a recreational
51 activity under this chapter, a water course that in its natural state without the aid of artificial
52 means is useful for commerce and has a useful capacity as a public highway of transportation.

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

54 [~~(5)~~] (8) "Private property to which access is restricted" means privately owned real
55 property:

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

- 57 (b) that is:
- 58 (i) properly posted, as defined in Section 23-20-14;
- 59 (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or
- 60 (iii) posted as described in Subsection 76-6-206.3(2)(c);
- 61 (c) that is fenced or enclosed as described in:
- 62 (i) Subsection 76-6-206(2)(b)(ii); or
- 63 (ii) Subsection 76-6-206.3(2)(b); or
- 64 (d) that the owner or a person authorized to act on the owner's behalf has requested a
- 65 person to leave as provided by:
- 66 (i) Section 23-20-14;
- 67 (ii) Subsection 76-6-206(2)(b)(i); or
- 68 (iii) Subsection 76-6-206.3(2)(a).
- 69 ~~[(6)]~~ (9) "Public access area" means the limited part of privately owned property that:
- 70 (a) lies beneath or within three feet of a public water or that is the most direct, least
- 71 invasive, and closest means of portage around an obstruction in a public water; ~~[and]~~
- 72 (b) is open to public recreational access under Section 73-29-203; and
- 73 (c) can be accessed from an adjoining public assess area or public right-of-way.
- 74 ~~[(7)]~~ (10) "Public recreational access" means the right to engage in recreational access
- 75 established in accordance with Section 73-29-203.
- 76 ~~[(8)]~~ (11) (a) "Public water" means water:
- 77 (i) described in Section 73-1-1; and
- 78 (ii) flowing or collecting on the surface:
- 79 (A) within a natural or realigned channel; or
- 80 (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
- 81 (b) "Public water" does not include water flowing or collecting:
- 82 (i) on impounded wetland;
- 83 (ii) on a migratory bird production area, as defined in Section 23-28-102;
- 84 (iii) on private property in a manmade:
- 85 (A) irrigation canal;
- 86 (B) irrigation ditch; or
- 87 (C) impoundment or reservoir constructed outside of a natural or realigned channel; or

88 (iv) on a jurisdictional wetland described in 33 C.F.R. Sec. 328.3.

89 [~~9~~] (12) (a) "Recreational access" means to use a public water and to touch a public
90 access area incidental to the use of the public water for:

91 (i) floating;

92 (ii) fishing; or

93 (iii) waterfowl hunting conducted:

94 (A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203,
95 and 76-10-508; and

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

98 (b) "Recreational access" does not include:

99 (i) hunting, except as provided in Subsection [~~9~~] (12)(a)(iii);

100 (ii) wading without engaging in activity described in Subsection [~~9~~] (12)(a); or

101 (iii) any other activity.

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

103 (a) is lawful;

104 (b) is engaged in:

105 (i) for a recreational purpose; or

106 (ii) a commercial purpose if an individual is guiding or outfitting another individual
107 who is engaging in recreational activity;

108 (c) requires use of the water to be effectively enjoyed or accomplished; and

109 (d) actually uses the public water when undertaken.

110 (14) "Weber River navigable waters" means the section of the Weber River between
111 the confluence of the Main Fork and Middle Fork of the Weber River in Holiday Park and
112 Echo Reservoir.

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

114 **73-29-104. Trespass related to public waters.**

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

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

118 (2) a minimum fine of \$750 for a second offense and loss of access to public waters

119 permitted under this chapter for a time period determined by the court; and

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

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

124 **73-29-201. General access provisions.**

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

127 (a) the public water:

128 (i) is a navigable water; or

129 (ii) is on public property; and

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

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

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

137 (4) (a) An individual who does not own the adjacent property may not engage in
138 recreational activity on Weber River navigable waters if the recreational activity:

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

140 (A) a fence, as provided in Section [4-26-101](#);

141 (B) a structure;

142 (C) diversion works; or

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

144 (ii) alters or obstructs water flows; or

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

146 (b) While engaging in recreational activity on Weber River navigable waters, an
147 individual may not:

148 (i) litter in violation of state law;

149 (ii) destroy or deface public or private property;

150 (iii) harass livestock; or

151 (iv) harass a property owner.

152 (c) While engaging in recreational activity on Weber River navigable waters, an
153 individual may not engage in the following activities unless authorized by the owner of the
154 property adjacent to the river where the activity occurs:

155 (i) hunting;

156 (ii) horseback riding;

157 (iii) use of a motor vehicle, as defined in Section [41-6a-102](#);

158 (iv) use of an off-highway vehicle, as defined in Section [41-22-2](#); or

159 (v) use of a non-motorized wheeled vehicle.

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

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

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

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

170 (i) that does not unreasonably endanger the safety of an individual engaged in
171 recreational activity using the river; and

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

173 (d) The owner of private land adjacent to Weber River navigable waters placing a
174 fence or obstruction across the river shall allow placement of a ladder, gate, or other facility or
175 access allowing safe portage or passage around the fence or obstruction.

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

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

181 **73-29-206. Effect of chapter on other uses and restrictions -- Required acts.**

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

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

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

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

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

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

194 (5) Nothing in this chapter supersedes the Division of Forestry, Fire, and State Lands'
195 ownership and management of sovereign lands, as defined in Section [65A-1-1](#).