

PUBLIC ACCESS TO PRIVATE STREAM

BEDS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses public recreational activities on public waters over private beds.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows recreational activity within the ordinary high water mark of a public water over a private bed;
- ▶ allows portage around certain manmade obstacles;
- ▶ prohibits portage around certain natural obstacles on property to which access is restricted;
- ▶ allows a property owner to place a fence across a public water in certain circumstances;
- ▶ addresses access to public waters;
- ▶ prohibits certain conduct on public waters;
- ▶ requires the Division of Wildlife Resources to create a public access certificate, required to use public water over a private bed;
- ▶ creates criminal penalties for violations of the chapter's provisions;
- ▶ absolves a property owner of liability for certain conduct in connection with recreational uses; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **57-14-4**, as last amended by Laws of Utah 1997, Chapter 62

36 **57-14-7**, as last amended by Laws of Utah 1997, Chapter 62

37 ENACTS:

38 **73-6a-101**, Utah Code Annotated 1953

39 **73-6a-102**, Utah Code Annotated 1953

40 **73-6a-201**, Utah Code Annotated 1953

41 **73-6a-202**, Utah Code Annotated 1953

42 **73-6a-203**, Utah Code Annotated 1953

43 **73-6a-301**, Utah Code Annotated 1953

44 **73-6a-302**, Utah Code Annotated 1953



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

47 Section 1. Section **57-14-4** is amended to read:

48 **57-14-4. Owner's permitting another to use land without charge -- Effect.**

49 (1) Except as provided in Subsection 57-14-6(1), an owner of land who either directly
50 or indirectly invites or permits without charge or for a nominal fee of not more than \$1 per year
51 any person to use the land for any recreational purpose, or an owner of land who owns a private
52 bed beneath a public water, as defined by Section 73-6a-102, does not thereby:

53 [~~(1)~~] (a) make any representation or extend any assurance that the premises are safe for
54 any purpose;

55 [~~(2)~~] (b) confer upon the person the legal status of an invitee or licensee to whom a
56 duty of care is owed;

57 [~~(3)~~] (c) assume responsibility for or incur liability for any injury to persons or property
58 caused by an act or omission of the person or any other person who enters upon the land; or

59 ~~[(4)]~~ (d) owe any duty to curtail the owner's use of his land during its use for
60 recreational purposes.

61 (2) A person who sues an owner of land for liability for injuries sustained as a result of
62 the person's recreational activities on the owner's land shall pay the owner's attorney fees and
63 litigation costs incurred in the owner's defense of the suit, if the person's suit is unsuccessful.

64 Section 2. Section **57-14-7** is amended to read:

65 **57-14-7. Person using land of another not relieved from duty to exercise care.**

66 (1) This chapter ~~[may not be construed to]~~ does not relieve any person, using the land
67 of another for recreational purposes, from any otherwise existing obligation ~~[which the person~~
68 ~~may have in the absence of this act]~~ to exercise care in use of the land and in activities thereon,
69 or from the legal consequences of failure to employ care.

70 (2) A person using land under this chapter waives any claim arising from the
71 landowner's negligence in connection with the use of the land by the person using the land
72 under this chapter.

73 Section 3. Section **73-6a-101** is enacted to read:

74 **CHAPTER 6a. RECREATIONAL USE OF PUBLIC WATER**

75 **Part 1. General Provisions**

76 **73-6a-101. Title.**

77 This chapter is known as "Recreational Use of Public Water."

78 Section 4. Section **73-6a-102** is enacted to read:

79 **73-6a-102. Definitions.**

80 As used in this chapter:

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

82 (2) "Harass" means:

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

84 (b) an offense against an animal enterprise, as described in Section 76-6-110.

85 ~~Ĥ~~→ (3) **"Impounded wetland" means a wetland or wetland pond that is formed or the level**
85a **of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth**
85b **of water, including connecting channels.**

85c ~~[(3)]~~ (4) ←Ĥ "Ordinary high water mark" means:

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

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

89 (ii) at the level where the water body would normally stand during the high water

90 period when the water body is not affected by a flood or drought; or

91 (b) the area actually submerged by water that is not flood water in an area where the

92 line the water body impresses upon the soil, as defined in Subsection ~~H→ [(3)] (4) ←H (a),~~

92a is not readily

93 identified.

94 ~~H→ [(4)] (5) ←H~~ "Permission" is as defined in Section 23-20-14.

95 ~~H→ [(5)] (6) ←H~~ "Private bed" means a privately owned bed of a public water.

96 ~~H→ [(6)] (7) ←H~~ "Private property to which access is restricted" means privately owned real

97 property:

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

99 (b) that is:

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

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

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

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

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

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

106 (d) that the owner or a person authorized to act on the owner's behalf has requested a

107 person to leave as provided by:

108 (i) Section 23-20-14;

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

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

111 ~~H→ [(7)] (8) ←H~~ (a) "Public water" means water:

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

113 (ii) flowing or collecting on the surface:

114 (A) within a natural or realigned channel; or

115 (B) in a natural lake, pond, or reservoir on a natural or realigned channel.

116 (b) "Public water" does not include water flowing or collecting on ~~H→ :~~

116a (i) **impounded wetland;**

116b (ii) **jurisdictional wetland described in 33 C.F. R. 328.3;**

116c (iii) **a migratory bird production area, as defined in Section 23-28-102; or**

116d (iv) ~~←H~~ private property in a

117 manmade:

118 ~~H→ [(i)] (A) ←H~~ irrigation canal;

119 ~~H→ [(ii)] (B) ←H~~ irrigation ditch; or

120 ~~H→ [(iii)] (C) ←H~~ impoundment or reservoir constructed outside of a natural or realigned

120a channel.

121 ~~H~~→ [(8)] (9) ←~~H~~ (a) "Recreational activity" means activity that:
 122 (i) is lawful;
 123 (ii) is engaged in:
 124 (A) for a recreational purpose; or
 125 (B) a commercial purpose if a person is guiding or outfitting another person who is
 126 engaging in recreational activity;
 127 (iii) requires use of the water to be effectively enjoyed or accomplished; and
 128 (iv) actually uses the public water when undertaken.

129 (b) "Recreational activity" does not include hunting on any public water, except
 130 waterfowl hunting done in compliance with Sections 23-20-8, 73-6a-201, and 76-10-508.

131 Section 5. Section **73-6a-201** is enacted to read:

132 **Part 2. Recreational Use of Private Beds**

133 **73-6a-201. Recreational use of public waters over private beds.**

134 (1) Except as provided by Subsection (2), a person who touches a private bed on
 135 private property to which access is restricted without permission is subject to liability for
 136 trespass under:

137 (a) Section 23-20-14;

138 (b) Section 76-6-206;

139 (c) Section 76-6-206.3; and

140 (d) a civil action for a claim arising out of touching the private bed.

141 (2) A person possessing a valid public access certificate in accordance with Section
 142 73-6a-202 who engages in recreational activity in a public water containing sufficient water at
 143 the time to support the recreational activity may touch a private bed without permission.

144 (3) While engaging in a recreational activity on private property to which access is
 145 restricted as authorized by Subsection (2), a person may leave the bed only if:

146 (a) the person has permission to enter the private property; or

147 (b) (i) a manmade obstruction precludes the safe passage of a person engaged in
 148 recreational activity or the continuation of recreational activity in the bed; and

149 (ii) the person walks or portages outside the bed around the manmade obstruction in

150 the most direct and least obtrusive manner to re-enter the ~~H~~→ same body of ←~~H~~ public water at
 150a the nearest safe point

151 past the manmade obstruction.

152 (4) (a) Except as provided in Subsection (4)(b), a person may not leave the bed on
153 private property to which access is restricted to walk or portage around a natural obstacle
154 without permission.

155 (b) (i) A person floating on a public water in a boat, raft, tube, or other flotation device
156 may leave the bed on private property to which access is restricted to walk or portage around a
157 natural obstacle without permission if the natural obstacle poses a danger to the person and the
158 person is unable to safely navigate around the natural obstacle or retreat in the direction from
159 which the person approached the natural obstacle.

160 (ii) A person walking or portaging in accordance with this Subsection (4)(b) shall walk
161 or portage in the least obtrusive manner possible, leaving and reentering the private bed ~~H~~→ of the
161a same public water ←H at a
162 safe point nearest to the obstacle.

163 (5) (a) The owner of a private bed under a public water may place a fence or
164 obstruction across a public water if the fence or obstruction is placed for a reason other than
165 blocking access for public recreational activity.

166 (b) The owner of a private bed under a public water placing a fence or obstruction
167 across the public water shall construct and maintain the fence or obstruction in a manner:

168 (i) that does not unreasonably endanger the safety of a person engaged in recreational
169 activity using the public water; and

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

171 (c) A person may not place a fence or other obstruction on a highway or other public
172 right-of-way intersecting a public water unless a gate or other form of passage is provided to
173 allow the public to access the public water from the right-of-way to engage in any recreational
174 activity permitted on the public water.

175 (6) Except as provided by Subsection (3), a person engaging in a recreational activity
176 on a public water over a private bed, may only enter or exit the public water:

177 (a) on public property, including highway rights-of-way, another public water, or other
178 property, unless prohibited by the entity with jurisdiction over the use of the public property;

179 (b) on private property to which access is restricted, with permission; or

180 (c) on private property to which access is not restricted.

181 (7) A person may not engage in recreational activity on a public water if the
182 recreational activity:

- 183 (a) destroys, materially damages, removes, or alters real or personal property,
184 including:
- 185 (i) a fence, as provided in Section 4-26-4;
 - 186 (ii) a structure;
 - 187 (iii) diversion works; or
 - 188 (iv) vegetation, soil, or rock other than incidental to ordinary use;
- 189 (b) alters or obstructs water flows;
- 190 (c) involves construction or maintenance of a structure on the bed; or
- 191 (d) is undertaken on:
- 192 (i) horseback;
 - 193 (ii) a motor vehicle, as defined in Section 41-6a-102;
 - 194 (iii) an off-highway vehicle, as defined in Section 41-22-2; or
 - 195 (iv) a non-motorized wheeled vehicle.
- 196 (8) While engaging in recreational activity on a public water, a person may not:
- 197 (a) litter in violation of state law;
 - 198 (b) destroy or deface public or private property;
 - 199 (c) harass livestock; or
 - 200 (d) harass a property owner.
- 201 (9) A person, including the owner of a private bed, may not harass a person engaged in
202 recreational activity on a public water.
- 203 Section 6. Section **73-6a-202** is enacted to read:
- 204 **73-6a-202. Access education -- Certificate.**
- 205 (1) The Division of Wildlife Resources shall create a free public education program to
206 inform the public of this chapter's provisions concerning access to public waters and private
207 beds.
- 208 (2) The public education program shall:
- 209 (a) be made available to the public on the Internet; and
 - 210 (b) allow a person, upon completion of the program, to print a public access certificate.
- 211 (3) A public access certificate is required before a person may exercise the access
212 rights described in Section 73-6a-201.
- 213 (4) The public access certificate is effective:

214 (a) upon successful completion of the online education program; and
215 (b) for 365 days after completion of the online education program.
216 (5) Except as provided in Subsection (6), a person may not:
217 (a) engage in recreational activity on a public water under authority of Section
218 73-6a-201, unless:
219 (i) the person obtains a public access certificate; and
220 (ii) carries the public access certificate with the person while engaged in recreational
221 activity on the public water; and
222 (b) lend, transfer, sell, trade, give, or assign a public access certificate or any associated
223 rights to another person.
224 (6) (a) A person under the age of 18 is not required to obtain or possess a public access
225 certificate if:
226 (i) the person is part of a group of juveniles of more than three and less than 10 in
227 number who are jointly engaging in recreational activity under authority of Section 73-6a-201;
228 and
229 (ii) the group is accompanied and led by one or more adults possessing a valid public
230 access certificate.
231 (b) A person under the age of 12 is not required to obtain or possess a public access
232 certificate if the juvenile is accompanied and supervised by an adult possessing a valid public
233 access certificate.
234 (c) A person is not required to obtain or possess a valid public access certificate if:
235 (i) the person is a customer of an outfitting company registered with the Division of
236 State Parks and Recreation; and
237 (ii) the outfitting company and each of its guides or captains obtains and possesses a
238 valid public access certificate and informs the customer of this chapter's provisions.
239 (d) An adult, outfitting company, guide, or captain possessing a valid public access
240 certificate under this section is civilly responsible for the conduct of a juvenile or customer
241 who violates this chapter's provisions.
242 Section 7. Section **73-6a-203** is enacted to read:
243 **73-6a-203. Penalty.**
244 (1) Except as provided in Subsection (2), a person who violates this part is guilty of a

245 class B misdemeanor.

246 (2) A person who violates this part by not obtaining or possessing a valid public access
247 certificate is guilty of an infraction.

248 (3) (a) A court may revoke the public access certificate privileges of any person who is
249 guilty of two or more offenses punishable under Subsection (1).

250 (b) If a court revokes the public access certificate of a person under Subsection (3)(a),
251 the court shall promptly notify the Division of Wildlife Resources of the revocation.

252 (c) The Division of Wildlife Resources, upon receiving notice of revocation from a
253 court, shall prohibit the person from obtaining a public access certificate under Section
254 73-6a-202 for the duration specified in the court's order.

255 Section 8. Section **73-6a-301** is enacted to read:

256 **Part 3. Miscellaneous**

257 **73-6a-301. Applicability of the chapter.**

258 The provisions of this chapter do not affect:

259 (1) the title or ownership of the surface waters, beds, or portage routes of public water;

260 (2) sovereign lands, as defined in Section 65A-1-1; or

261 (3) the rights recognized in Section 23-21-4.

262 Section 9. Section **73-6a-302** is enacted to read:

263 **73-6a-302. Landowner liability.**

264 The owner of a private bed that is subject to the authorization recognized in this chapter
265 has the liability protection afforded by Title 57, Chapter 14, Limitation of Landowner Liability
266 - Public Recreation.

Legislative Review Note
as of 1-6-10 3:09 PM

Office of Legislative Research and General Counsel

H.B. 80 - Public Access to Private Stream Beds

Fiscal Note

2010 General Session
State of Utah

State Impact

Enacting this bill will require a \$6,800 ongoing General Fund appropriation to Courts that will be off-set by \$7,100 in fines for a net revenue increase of \$300 per year.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$6,800	\$6,800	\$0	\$7,100	\$7,100
Total	\$0	\$6,800	\$6,800	\$0	\$7,100	\$7,100

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.