

**4-26-4. Failure to close entrance to enclosure -- Class "C" misdemeanor --**

**Damages.**

~~[Any person who willfully]~~

(1) A person is guilty of a class C misdemeanor if the person willfully:

(a) throws down a fence ; or

(b)(i) opens bars or gates into any enclosure ~~[other than]~~ that is not:

(A) the person's own enclosure ; or ~~[into any]~~

(B) an enclosure jointly owned or occupied by ~~[such]~~ the person and others~~[-]~~ ; and

(ii) leaves ~~[it]~~ the enclosure open ~~[is guilty of a class "C" misdemeanor, and is]~~ .

(2) A person is guilty of a class B misdemeanor if the person willfully cuts a fence.

(3) A person who performs an act described in this section is also liable ~~[in]~~ for damage for any injury sustained by any person as a result of ~~[such an]~~ the act.

**23-19-17. Resident fishing and hunting license -- Use of fee.**

(1) A resident, after paying the fee established by the Wildlife Board and purchasing a public access stamp, may obtain, as provided by the Wildlife Board's rules, a combination license to:

(a) fish;

(b) hunt for small game; and

(c) apply for or obtain a big game, cougar, bear, or turkey hunting permit.

(2) Up to \$1 of the combination license fee may be used for the hunter education program for any of the following:

(a) instructor and student training;

(b) assisting local organizations with development;

(c) maintenance of existing facilities; or

(d) operation and maintenance of the hunter education program.

(3) (a) Up to 50 cents of the combination license fee may be used for the upland game program to:

(i) acquire pen-raised birds; or

(ii) capture and transplant upland game species.

(b) The combination license fee revenue designated for the upland game program by Subsection (3)(a) is in addition to any combination license fee revenue that may be used for the upland game program as provided by Sections 23-19-43 and 23-19-47.

**23-19-21. Fishing license -- Public access stamp.**

(1) A person 12 years of age or older shall purchase a fishing license and public access stamp before engaging in any regulated fishing activity.

(2) A person 12 years of age or older, upon paying the fee prescribed by the Wildlife Board and purchasing a public access stamp, may obtain a license to fish:

(a) for one day;

(b) for seven consecutive days; or

(c) for 365 consecutive days from the date of sale.

(3) A person under 12 years of age may fish without a license according to rules, proclamations, and orders set forth by the Wildlife Board.

(4) The effective date shall be indicated on the license.

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**23-19-21.1. Public access stamp.**

(1) A person purchasing a combination license or fishing license under sections 23-19-17 or 23-19-21 shall purchase a public access stamp.

(2) A public access stamp shall cost \$5.

(3) (a) There is created within the General Fund a restricted account known as the Public Access Restricted Account.

(b) The Public Access Restricted Account consists of:

(i) monies deposited in the account from the purchase of public access stamps;

and

(ii) interest on account monies.

(4) Upon appropriation by the Legislature, monies from the Public Access Restricted Account shall be used by the division for protecting and preserving public access to public waters, including by:

- (a) stocking fish;
- (b) enforcing wildlife laws on public waters flowing over private beds, as defined in Section 73-6a-102;
- (c) educating the public about access to public waters;
- (d) constructing fence ladders to assist the users of public waters, as requested by property owners;
- (e) improving habitats for aquatic species; and
- (f) protecting or enhancing public access to public waters.
- (5) The division shall report annually until December 1, 2016 to the Legislature's Natural Resources, Agriculture, and the Environment Interim Committee concerning:
  - (a) the division's expenditures from the fund; and
  - (b) other matters concerning public access to public waters of which it is aware.

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

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

([4] a) make any representation or extend any assurance that the premises are safe for any purpose;

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

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

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

(2) A person who sues an owner of land for liability for injuries sustained as a result of the person's recreational activities on the owner's land shall pay the owner's attorney

fees and litigation costs incurred in the owners' defense of the suit, if the person's suit is unsuccessful.

## Chapter 6a. RECREATIONAL USE OF PUBLIC WATER

### Part 1. General Provisions

#### 73-6a-101. Title.

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

Section 5. Section **73-6a-102** is enacted to read:

#### 73-6a-102. Definitions.

As used in this chapter:

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

(2) "Harassment" means:

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

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

(3)(a) "Loitering" means remaining or congregating in an area for no purpose.

(b) "Loitering" does not include remaining or congregating in an area while performing a recreational activity.

(4) "Ordinary high water mark:" means:

(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 the water body impresses upon the soil, as defined in Subsection (4)(a), is not readily identified.

(5) "Permission" is as defined in Section 23-20-14.

(6) "Private bed" means the bed of a water body that is privately owned.

(7) "Private water" means water that a person, with a valid right to use the

water, has reduced to actual, physical possession and exclusive control by placing the water in a receptacle for storage or conveyance.

(8) "Property to which access is restricted" means 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)

(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).

(9) (a) "Public water" means water:

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

(ii) flowing on the surface:

(A) within a natural or realigned channel; or

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

(b) "Public water" does not include private water.

(10)(a) "Recreational activity" means an activity requiring the use of the water that is:

(i) lawful;

(ii) engaged in:

(A) for a recreational purpose; or

(B) a commercial purpose if a person is guiding or outfitting another person who is engaging in a recreational activity; and

(iii) consistent with the amount of water actually present at the time the activity occurs.

(b) "Recreational activity" does not include:

(i) hunting on any public water, except waterfowl hunting done in compliance with Sections 23-20-8, 73-6a-201, and 76-10-508; or

(ii) ingress or egress for the purpose of engaging in a recreational activity if the ingress or egress is made:

(A) outside of a private bed; or

(B) inside a private bed but more than five feet beyond the area actually submerged by water.

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

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

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

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

(a) Section 23-20-14;

(b) Section 76-6-206;

(c) Section 76-6-206.3 and

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

(2) A person engaged in a recreational activity in a public water that contains water at the time of the recreational activity may touch a private bed within the ordinary high water mark.

(3) While engaging in a recreational activity as authorized by Subsection (2), a person may enter property to which access is restricted from the area described in Subsection (2) only if:

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

(b) (i) a manmade obstruction materially interferes with the recreational activity;

and

(ii) the person walks or portages on private property around the manmade obstruction in the most direct and least obtrusive manner to re-enter the public water at the nearest safe point above or below the manmade obstruction.

(4) The owner of a private bed under a public water may place a fence across the public water if the fence is constructed and maintained:

(a) consistent with any applicable law and rule;

(b) to not unreasonably restrict or jeopardize the safe and reasonable passage of a person lawfully accessing the surface and bed of the public water; and

(c) for a bona fide land use purpose other than obstructing public access permitted by this chapter or other law.

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

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

(b) on private property with permission.

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

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

(i) fence, as provided in Section 4-26-4;

(ii) structure;

(iii) diversion works; or

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

(b) alters or obstructs water flows;

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

(d) is undertaken on:

(i) horseback;

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

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

(e) occurs on a public water containing a natural obstacle that would require the person to walk or portage over private property to avoid the natural obstacle if:

(i) the private property is property to which access is restricted; or

(ii) the person does not have permission to walk or portage over the private property; or

(f) involves loitering on the private bed.

(7) While engaging in recreational activity on a public water, a person may not:

(a) litter in violation of Section 76-10-2701;

(b) destroy or deface public or private property;

(c) harass livestock; or

(d) harass a property owner.

(8) A person, including the owner of a private bed, may not harass a person engaged in recreational activity on a public water.

**73-6a-202. Penalty.**

A person who violates this part is guilty of a class B misdemeanor.

**Part 3. Miscellaneous**

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

The provisions of this chapter do not affect:

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

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

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

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

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