

**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.

**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:

~~[(1)]~~ 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 within 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) "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.

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

(5) "Private bed" means a privately owned bed of a public water.

(6) "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)
- (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).
- (7) (a) "Public water" means water:
  - (i) described in Section 73-1-1; and
  - (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 on private property in a manmade:
    - (i) irrigation canal;
    - (ii) irrigation ditch; or
    - (iii) impoundment or reservoir constructed outside of a natural or realigned channel.
- (10)(a) "Recreational activity" means an activity that:
  - (i) is lawful;
  - (ii) is 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;
  - (iii) requires use of the water to be effectively enjoyed or accomplished; and
  - (iv) actually uses the public water when undertaken.
- (b) "Recreational activity" does not include hunting on any public water, except

waterfowl hunting done in compliance with Sections 23-20-8, 73-6a-201, and 76-10-508.

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 on private property 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 possessing a valid public access permit in accordance with Section 73-6a-202 who engages in a recreational activity in a public water containing sufficient water at the time to support the recreational activity may touch a private bed without permission.

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

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

(b) (i) a manmade obstruction precludes the recreational activity; and

(ii) the person walks or portages outside the bed 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) A person may not leave the bed on private property to which access is restricted to walk or portage around a natural obstacle without permission.

(5)(a) The owner of a private bed under a public water may place a fence or obstruction across a public water.

(b) Notwithstanding Subsection (3), no portage is allowed around or over a fence across a public water if the fence is constructed and maintained:

- (i) consistent with any applicable law and rule;
- (ii) 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
- (iii) for a bona fide purpose other than obstructing public access permitted by this chapter or other law.

(6) 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;

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

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

(7) 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; or

(d) is undertaken on:

(i) horseback;

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

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

(iv) a non-motorized wheeled vehicle.

(8) 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.

(9) 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.** Access education -- Permit.

(1) The Division of Wildlife Resources shall create a free public education program to inform the public of this chapter's provisions concerning access to public waters and private beds.

(2) The public education program shall:

(a) be made available on the Internet; and

(b) allow a person, upon completion of the program, to print a public access permit.

(3) A public access permit is required before a person may exercise the access rights described in Section 73-6a-201.

**73-6a-203.** Penalty.

(1) Except as provided in Subsection (2), a person who violates this part is guilty of a class B misdemeanor.

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

(3)(a) A court may revoke the public access permit of any person who is guilty of multiple violations of Subsection (1).

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

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

**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.**

The owner of 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.