

1 _____ BILL NO. _____

2 INTRODUCED BY _____

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DISCHARGE OF A FIREARM UNDER
5 CERTAIN CONDITIONS ON CLASS II WATERWAYS; AND AMENDING SECTION 23-2-302, MCA."

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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9 **Section 1.** Section 23-2-302, MCA, is amended to read:

10 **"23-2-302. Recreational use permitted -- limitations -- exceptions.** (1) Except as provided in
11 subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the
12 public without regard to the ownership of the land underlying the waters.

13 (2) The right of the public to make recreational use of surface waters does not include, without
14 permission or contractual arrangement with the landowner:

15 (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for
16 operation upon the water;

17 (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an
18 intermittently flowing natural watercourse;

19 (c) the recreational use of waters while diverted away from a natural water body for beneficial use
20 pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has
21 provided public access;

22 (d) big game hunting;

23 (e) overnight camping unless it is necessary for the enjoyment of the surface water and the
24 campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied
25 dwelling, whichever is less;

26 (f) the placement or creation of any permanent duck blind, boat moorage, or any other permanent
27 object;

28 (g) the placement or creation of any seasonal object, such as a duck blind or boat moorage,

1 unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed
2 out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less;

3 (h) use of a streambed as a right-of-way for any purpose when water is not flowing in the
4 streambed.

5 (3) The right of the public to make recreational use of class II waters does not include, without
6 permission of the landowner:

7 (a) the discharge of a firearm by a person within 500 yards of an inhabited dwelling or an
8 outbuilding in close proximity to an inhabited dwelling. Temporary absences of inhabitants do not render a
9 dwelling uninhabited.

10 ~~(a)~~(b) big game hunting;

11 ~~(b)~~(c) overnight camping;

12 ~~(c)~~(d) the placement or creation of any seasonal object; or

13 ~~(d)~~(e) other activities that are not primarily water-related pleasure activities as defined in 23-2-
14 301(10).

15 (4) The right of the public to make recreational use of surface waters does not grant any easement
16 or right to the public to enter onto or cross private property in order to use those waters for recreational
17 purposes.

18 (5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public
19 safety, or the protection of public and private property, governing recreational use of class I and class II waters.
20 These rules must include the following:

21 (a) the establishment of procedures by which any person may request an order from the
22 commission:

23 (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface
24 water; or

25 (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed
26 by the commission;

27 (b) provisions requiring the issuance of written findings and a decision whenever a request is
28 made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters that are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

4 (6) The provisions of this section do not affect any rights of the public with respect to state-owned
5 lands that are school trust lands or any rights of lessees of those lands."

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