

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0569.01 Jennifer Berman x3286

HOUSE BILL 21-1089

HOUSE SPONSORSHIP

Soper, Rich

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING LEGAL RESPONSIBILITIES SURROUNDING
102 WAKEBOARDERS' USE OF A WAKEBOARD PARK.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes the legal responsibilities of wakeboard park operators and wakeboarders who use wakeboard parks, including:

- An operator's responsibility to post boundary markings and any warnings necessary for the safe enjoyment of the wakeboard park;
- A wakeboarder's assumption of the inherent dangers and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 (a) DEFINE THE LEGAL RIGHTS AND RESPONSIBILITIES OF
2 WAKEBOARD PARK OPERATORS AND WAKEBOARDERS USING WAKEBOARD
3 PARKS; AND

4 (b) DEFINE THE RIGHTS AND RESPONSIBILITIES BETWEEN
5 WAKEBOARDERS AT A WAKEBOARD PARK.

6 **33-45-103. Definitions.** AS USED IN THIS ARTICLE 45, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CONDITIONS OF ORDINARY VISIBILITY" MEANS DAYLIGHT AND,
9 WHERE APPLICABLE, NIGHTTIME IN NONPRECIPITATING WEATHER.

10 (2) "FUTURE DAMAGES" HAS THE MEANING SET FORTH IN SECTION
11 13-64-202 (2).

12 (3) "INHERENT DANGERS AND RISKS OF WAKEBOARDING" MEANS
13 THOSE DANGERS OR CONDITIONS THAT ARE PART OF THE SPORT OF
14 WAKEBOARDING, INCLUDING:

15 (a) CHANGING WEATHER CONDITIONS;

16 (b) WATER CONDITIONS AS THEY EXIST OR MAY CHANGE;

17 (c) COLLISIONS WITH ANY OF THE FOLLOWING IN THE WATER OR ON
18 THE SHORE:

19 (I) VESSELS AND OTHER WATERCRAFT;

20 (II) INDIVIDUALS;

21 (III) ANIMALS;

22 (IV) PLANTS; OR

23 (V) OTHER NATURAL OR MAN-MADE OBJECTS; OR

24 (d) THE FAILURE OF WAKEBOARDERS TO WAKEBOARD WITHIN
25 THEIR ABILITIES.

26 (4) "MOTORBOAT" HAS THE MEANING SET FORTH IN SECTION
27 33-13-102 (1).

1 (5) "NONECONOMIC LOSS OR INJURY" HAS THE MEANING SET
2 FORTH IN SECTION 13-21-102.5 (2)(b).

3 (6) "PAST DAMAGES" HAS THE MEANING SET FORTH IN SECTION
4 13-64-202 (6).

5 (7) "PRESENT VALUE" HAS THE MEANING SET FORTH IN SECTION
6 13-64-202 (7).

7 (8) "VESSEL" HAS THE MEANING SET FORTH IN SECTION 33-13-102
8 (5)(a).

9 (9) "WAKEBOARD" OR "WAKEBOARDING" MEANS THE USE OF A
10 SHORT BOARD, SKI, OR SKATE WITH FOOT BINDINGS ON WHICH AN
11 INDIVIDUAL IS TOWED BY A MOTORBOAT ACROSS THE MOTORBOAT'S WAKE
12 OR TOWED BY CABLES ATTACHED TO AN OVERHEAD TRACK.

13 (10) "WAKEBOARD PARK" MEANS ALL AREAS OF A LAKE,
14 RESERVOIR, OR FACILITY THAT ARE DESIGNATED AND OPERATED FOR
15 WAKEBOARD USE.

16 (11) "WAKEBOARD PARK OPERATOR" OR "OPERATOR" MEANS ANY
17 PERSON WITH OPERATIONAL RESPONSIBILITY FOR A WAKEBOARD PARK.

18 **33-45-104. Negligence - civil actions.** TO THE EXTENT THAT A
19 VIOLATION OF ANY REQUIREMENT OF THIS ARTICLE 45 CAUSES INJURY TO
20 ANOTHER PERSON OR DAMAGE TO PROPERTY, INCLUDING A VIOLATION BY
21 AN OPERATOR, THE VIOLATION CONSTITUTES NEGLIGENCE ON THE PART OF
22 THE PERSON VIOLATING THE REQUIREMENT.

23 **33-45-105. Duties of operators - signs and notices - ticket**
24 **warning - competitions.** (1) EACH OPERATOR SHALL MAINTAIN ALL
25 EQUIPMENT, AREAS, AND CONDITIONS OF THE OPERATOR'S WAKEBOARD
26 PARK IN A MANNER THAT MAXIMIZES THE SAFE USE OF THE WAKEBOARD
27 PARK BY WAKEBOARDERS AND THE SAFETY OF ANY OTHER INDIVIDUALS

1 OR PROPERTY LOCATED AT THE WAKEBOARD PARK.

2 (2) EACH OPERATOR SHALL MAINTAIN VISIBLE MARKINGS AND
3 WARNING SIGNS AT THE WAKEBOARD PARK INFORMING WAKEBOARDERS
4 AND OTHER INDIVIDUALS PRESENT AT THE WAKEBOARD PARK OF THE
5 BOUNDARIES OF THE WAKEBOARD PARK AND ANY INFORMATION
6 NECESSARY FOR THE SAFE ENJOYMENT OF THE WAKEBOARD PARK. THE
7 OPERATOR SHALL MAINTAIN THE MARKINGS AND WARNING SIGNS SO AS TO
8 BE READABLE AND RECOGNIZABLE UNDER CONDITIONS OF ORDINARY
9 VISIBILITY.

10 (3) (a) EVERY TICKET SOLD OR MADE AVAILABLE FOR SALE TO
11 WAKEBOARDERS AT A WAKEBOARD PARK MUST CONTAIN THE FOLLOWING
12 WARNING NOTICE IN A CONSPICUOUS FONT, SIZE, AND LOCATION ON THE
13 TICKET:

14 UNDER COLORADO LAW, A WAKEBOARDER ASSUMES THE
15 RISK OF ANY INJURY TO PERSON OR PROPERTY RESULTING
16 FROM ANY OF THE INHERENT DANGERS AND RISKS OF
17 WAKEBOARDING AND MAY NOT RECOVER FROM A
18 WAKEBOARD PARK OPERATOR FOR AN INJURY RESULTING
19 FROM ANY OF THE INHERENT DANGERS AND RISKS OF
20 WAKEBOARDING, INCLUDING: CHANGING WEATHER
21 CONDITIONS; EXISTING AND CHANGING WATER CONDITIONS;
22 COLLISIONS WITH NATURAL OBJECTS, MAN-MADE OBJECTS,
23 OR OTHER WAKEBOARDERS OR INDIVIDUALS; AND THE
24 FAILURE OF OTHER WAKEBOARDERS TO WAKEBOARD
25 WITHIN THEIR OWN ABILITIES.

26 (b) AN OPERATOR SHALL ALSO PLACE THE WARNING NOTICE
27 LANGUAGE SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION ON ONE OR

1 MORE SIGNS NEAR THE ENTRANCE OF THE WAKEBOARD PARK, WHICH SIGNS
2 THE OPERATOR SHALL MAINTAIN SO AS TO BE READABLE AND
3 RECOGNIZABLE UNDER CONDITIONS OF ORDINARY VISIBILITY.

4 (4) AN OPERATOR HAS NO DUTY ARISING OUT OF ITS STATUS AS AN
5 OPERATOR TO ANY WAKEBOARDER THAT WAKEBOARDS BEYOND THE
6 MARKED BOUNDARIES OF THE WAKEBOARD PARK.

7 (5) AN OPERATOR THAT DETERMINES A WAKEBOARDER IS
8 WAKEBOARDING IN A CARELESS AND RECKLESS MANNER MAY REVOKE THE
9 WAKEBOARDER'S WAKEBOARDING PRIVILEGES AT THE OPERATOR'S
10 WAKEBOARD PARK. THIS SUBSECTION (5) SHALL NOT BE CONSTRUED TO
11 CREATE AN AFFIRMATIVE DUTY ON THE PART OF AN OPERATOR TO
12 PROTECT WAKEBOARDERS FROM THEIR OWN OR OTHER WAKEBOARDERS'
13 CARELESSNESS OR RECKLESSNESS.

14 (6) (a) WITH RESPECT TO ANY COMPETITIONS HELD AT A
15 WAKEBOARD PARK, AN OPERATOR SHALL ALLOW EACH COMPETITOR AN
16 OPPORTUNITY FOR A REASONABLE VISUAL INSPECTION OF THE COURSE,
17 VENUE, OR AREA.

18 (b) A COMPETITOR ASSUMES THE RISK OF ALL COURSE, VENUE, OR
19 AREA CONDITIONS RELATED TO A COMPETITION AT A WAKEBOARD PARK,
20 INCLUDING WEATHER AND WATER CONDITIONS; OBSTACLES; AND COURSE
21 OR FEATURE LOCATION, CONSTRUCTION, OR LAYOUT. NO LIABILITY
22 ATTACHES TO THE OPERATOR FOR INJURY OR DEATH TO A COMPETITOR
23 CAUSED BY COURSE, VENUE, OR AREA CONDITIONS THAT A VISUAL
24 INSPECTION SHOULD HAVE REVEALED OR BY COLLISIONS WITH OTHER
25 COMPETITORS.

26 **33-45-106. Duties of wakeboarders - penalties.** (1) EACH
27 WAKEBOARDER HAS THE SOLE RESPONSIBILITY FOR KNOWING THE RANGE

1 OF THE WAKEBOARDER'S OWN ABILITY TO NEGOTIATE THE WAKEBOARD
2 PARK AND TO WAKEBOARD WITHIN THE LIMITS OF THAT ABILITY. EACH
3 WAKEBOARDER EXPRESSLY ACCEPTS AND ASSUMES THE RISK OF AND ALL
4 LEGAL RESPONSIBILITY FOR ANY INJURY TO PERSON OR PROPERTY
5 RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF
6 WAKEBOARDING.

7 (2) (a) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THIS
8 ARTICLE 45 DOES NOT PRECLUDE A WAKEBOARDER FROM SUING ANOTHER
9 WAKEBOARDER FOR INJURY TO PERSON OR PROPERTY RESULTING FROM
10 THE OTHER WAKEBOARDER'S ACTS OR OMISSIONS.

11 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE RISK
12 OF A COLLISION BETWEEN WAKEBOARDERS AT A WAKEBOARD PARK IS
13 NEITHER AN INHERENT RISK NOR A RISK ASSUMED BY A WAKEBOARDER IN
14 AN ACTION BY ONE WAKEBOARDER AGAINST ANOTHER.

15 (3) EACH WAKEBOARDER AT A WAKEBOARD PARK SHALL
16 MAINTAIN AND CONTROL THE WAKEBOARDER'S SPEED AND COURSE AT ALL
17 TIMES WHEN WAKEBOARDING AND MAINTAIN A PROPER LOOKOUT TO
18 AVOID OTHER WAKEBOARDERS, INDIVIDUALS, AND OBJECTS.

19 (4) EACH WAKEBOARDER AT A WAKEBOARD PARK SHALL HEED ALL
20 POSTED MARKINGS AND SIGNS AND REFRAIN FROM ACTING IN A MANNER
21 THAT MAY CAUSE OR CONTRIBUTE TO THE INJURY OF ANOTHER
22 WAKEBOARDER OR INDIVIDUAL PRESENT AT THE WAKEBOARD PARK. EACH
23 WAKEBOARDER SHALL BE PRESUMED TO HAVE SEEN AND UNDERSTOOD
24 ALL INFORMATION POSTED IN ACCORDANCE WITH THIS ARTICLE 45. UNDER
25 CONDITIONS OF DECREASED VISIBILITY, THE WAKEBOARDER SHALL
26 LOCATE AND ASCERTAIN THE MEANING OF ALL MARKINGS AND SIGNS
27 POSTED AT A WAKEBOARD PARK IN ACCORDANCE WITH THIS ARTICLE 45.

1 (5) A WAKEBOARDER INVOLVED IN A COLLISION WITH ANOTHER
2 WAKEBOARDER OR INDIVIDUAL PRESENT AT A WAKEBOARD PARK SHALL
3 NOT LEAVE THE VICINITY OF THE COLLISION BEFORE GIVING THE
4 WAKEBOARDER'S NAME AND CURRENT ADDRESS TO AN EMPLOYEE OF THE
5 WAKEBOARD PARK, EXCEPT FOR THE PURPOSE OF SECURING AID FOR THE
6 INJURED PARTY OR MOVING TO A SECURE LOCATION OUT OF THE WAY OF
7 OTHER WAKEBOARDERS, AFTER WHICH THE WAKEBOARDER SHALL GIVE
8 THE WAKEBOARDER'S NAME AND CURRENT ADDRESS TO A WAKEBOARD
9 PARK EMPLOYEE. A PERSON WHO VIOLATES THIS SUBSECTION (5) IS GUILTY
10 OF A CLASS 2 PETTY OFFENSE AND, UPON CONVICTION THEREOF, SHALL BE
11 PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

12 **33-45-107. Statute of limitations.** ANY ACTION AGAINST A
13 WAKEBOARD PARK OPERATOR OR ITS EMPLOYEES BROUGHT TO RECOVER
14 DAMAGES FOR INJURY TO PERSON OR PROPERTY CAUSED BY THE
15 MAINTENANCE, SUPERVISION, OR OPERATION OF THE WAKEBOARD PARK
16 MUST BE BROUGHT WITHIN TWO YEARS AFTER THE CLAIM FOR RELIEF
17 ARISES.

18 **33-45-108. Limitation on actions for injury resulting from**
19 **inherent dangers and risks of wakeboarding.** NOTWITHSTANDING ANY
20 JUDICIAL DECISION OR ANY OTHER LAW TO THE CONTRARY, A
21 WAKEBOARDER SHALL NOT MAKE A CLAIM AGAINST OR RECOVER FROM A
22 WAKEBOARD PARK OPERATOR FOR INJURY RESULTING FROM ANY OF THE
23 INHERENT DANGERS OR RISKS OF WAKEBOARDING.

24 **33-45-109. Limitation of liability - exceptions.** (1) EXCEPT AS
25 SPECIFIED IN SUBSECTION (2) OF THIS SECTION, A WAKEBOARDER WHO IS
26 INJURED AT A WAKEBOARD PARK MAY RECOVER DAMAGES FROM THE
27 WAKEBOARD PARK OPERATOR ONLY IN AN AMOUNT UP TO ONE MILLION

1 DOLLARS BASED ON PRESENT VALUE. A DERIVATIVE CLAIM FILED BY
2 ANOTHER CLAIMANT MUST NOT EXCEED TWO HUNDRED FIFTY THOUSAND
3 DOLLARS BASED ON PRESENT VALUE. A CLAIM ATTRIBUTABLE TO
4 NONECONOMIC LOSS OR INJURY, WHETHER RELATED TO PAST DAMAGES OR
5 FUTURE DAMAGES OR A COMBINATION OF BOTH, MUST NOT EXCEED TWO
6 HUNDRED FIFTY THOUSAND DOLLARS BASED ON PRESENT VALUE.

7 (2) IF, UPON GOOD CAUSE SHOWN, A COURT DETERMINES THAT THE
8 PRESENT VALUE OF THE AMOUNT OF LOST PAST EARNINGS AND THE
9 PRESENT VALUE OF LOST FUTURE EARNINGS, THE PRESENT VALUE OF PAST
10 MEDICAL OR OTHER HEALTH CARE COSTS, OR BOTH, WHEN ADDED TO THE
11 PRESENT VALUE OF OTHER PAST DAMAGES AND THE PRESENT VALUE OF
12 OTHER FUTURE DAMAGES, WOULD EXCEED THE LIMITATIONS SET FORTH IN
13 SUBSECTION (1) OF THIS SECTION AND THAT APPLICATION OF THE
14 LIMITATIONS WOULD BE UNFAIR, THE COURT MAY AWARD DAMAGES IN
15 EXCESS OF THE LIMITATIONS IN AN AMOUNT EQUAL TO THE PRESENT
16 VALUE OF ADDITIONAL FUTURE DAMAGES BUT ONLY FUTURE DAMAGES
17 BASED ON THE LOSS OF EXCESS FUTURE EARNINGS, EXCESS FUTURE
18 MEDICAL OR OTHER HEALTH CARE COSTS, OR BOTH.

19 (3) THE LIMITATIONS SET FORTH IN SUBSECTION (1) OF THIS
20 SECTION AND THE EXCEPTIONS SET FORTH IN SUBSECTION (2) OF THIS
21 SECTION SHALL NOT BE DISCLOSED TO A JURY.

22 **33-45-110. Inconsistent law or statute.** WITH REGARD TO ANY
23 OTHER STATUTE OR RULE THAT IS INCONSISTENT WITH THIS ARTICLE 45,
24 THIS ARTICLE 45 CONTROLS.

25 **SECTION 2. Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly; except that, if a referendum petition is filed pursuant
2 to section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part will not take effect unless approved by the people at the
5 general election to be held in November 2022 and, in such case, will take
6 effect on the date of the official declaration of the vote thereon by the
7 governor.

8 (2) This act applies to conduct occurring on or after the applicable
9 effective date of this act.