

# SENATE BILL REPORT

## SB 5129

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As of January 18, 1999

**Title:** An act relating to adverse possession.

**Brief Description:** Expanding the requirements for adverse possession claims.

**Sponsors:** Senators Heavey, McCaslin, Deccio and Roach.

**Brief History:**

**Committee Activity:** Judiciary: 1/22/99.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Harry Steinmetz (786-7421)

**Background:** Adverse possession is a process through which a person can acquire title to land and extinguish the landowner's legal title. It has existed since the days of the English common law and rooted in the policy that society is best served by landowners utilizing their land and not allowing the land to be unproductive. Thus, under the adverse possession doctrine, if landowners ignore their land while a third party enters the land and uses it, the third party can gain title to that land.

Under current Washington law, initially enacted in 1854, if a third party has used a piece of land for ten years, he or she may bring an action to acquire title to that property. The use of the land must be actual, open and notorious, hostile, uninterrupted and exclusive. In short, the use must give the landowner notice that someone is using the land and that the level of use must be consistent with the nature and locale of the land. The state of mind of the adverse possessor is not relevant to the action to acquire title. Adverse possession can only occur between private parties. Exceptions exist for landowners who are incapacitated. Washington State has enacted statutes to protect specialized landowners, such as owners of timber lands.

A typical modern day adverse possession case involves a boundary line dispute where a neighbor has built a structure or fence over the boundary line. It has been suggested that landowners in rural areas are losing parts of their land through adverse possession due to the actions of unscrupulous neighbors. As a result, these landowners have had the value of their land diminished due to the requirements of the Growth Management Act.

**Summary of Bill:** The common law requirements for adverse possession are codified. Additionally, a person claiming adverse possession is required to show an "honest belief" that he was the owner of the property at the time he entered the property. Each element must be proven by clear and convincing evidence. Hostile possession— is defined. The adverse possessor may acquire only the possessory interest of the person who had possession when the adverse possession began. If the adverse possessor's claim is based on a

predecessor's use of the land, he must show that the predecessor also met all the elements of adverse possession.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** July 1, 1999.