

HOUSE BILL REPORT

SHB 1195

As Passed Legislature

Title: An act relating to rock climbing.

Brief Description: Limiting the liability of landowners for unintentional injuries incurred while rock climbing.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Delvin, Dunshee, Hinkle, Lovick, Mastin, Armstrong, Sump, Fromhold, Quall, Hatfield, Blake, Lantz, Mielke and McMahan).

Brief History:

Committee Activity:

Judiciary: 2/4/03, 2/25/03 [DPS].

Floor Activity:

Passed House: 3/6/03, 91-0.

Passed Senate: 4/8/03, 47-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Adds "rock climbing" to those specified outdoor recreational activities for which landowners who open their lands without charge are given immunity from civil liability if a recreational user of the land is injured or killed due to the landowner's negligence, gross negligence, or recklessness.
- Exempts fixed climbing anchors placed by climbers from those artificial conditions for which a landowner might be liable.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Bill Perry (786-7123).

Background:

The Legislature has changed the common law on the liability of landowners for injuries incurred by certain recreational users of land. In specified cases, a statute provides that landowner liability exists only for intentional harm.

At common law, on the other hand, a landowner may be liable for unintentionally causing harm through acts of negligence, gross negligence or recklessness as well through intentional acts. A landowner's liability at common law depends in part on the status of the injured party. That is, a landowner's duty to a particular person varies depending on whether the person is, for instance, a trespasser or an invitee. Generally, a landowner's duty to a trespasser is only to refrain from willfully or wantonly injuring the person, while the duty owed an invitee is to use ordinary care to keep the property reasonably safe.

As indicated above, a statute prescribes a different rule in the case of a landowner who allows members of the public to use his or her land for certain recreational purposes. This statutory provision applies to both private and public landowners. Generally, if a landowner allows the public to use the land for recreational purposes without charge, then the landowner is liable only for injuries that the landowner intentionally causes. This insulation from liability does not apply to an injury caused by a "known dangerous artificial latent condition" when the landowner has not posted conspicuous warning signs. In order for this exception to apply, the landowner must have actual knowledge of an artificial condition that is not readily apparent to a recreational user and that presents an unreasonable risk of harm, and then must have failed to post a warning.

The statute insulating landowners from liability applies to "outdoor recreation" including, but not limited to, certain specified activities. These activities are:

- gathering firewood;
- hunting, fishing, clam digging;
- camping, picnicking;
- swimming, hiking, bicycling;
- riding horses or other animals;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating and water sports;
- winter sports;
- nature study;
- viewing historical, archaeological, scenic, or scientific sites;
- skateboarding and other nonmotorized wheel-based activities; and
- hanggliding, and paragliding.

Summary of Substitute Bill:

Rock climbing is added to the list of recreational activities for which a landlord may be

immune from civil liability for injury or death caused by the landlord's unintentional acts.

A fixed climbing anchor put in place by someone other than the landowner is not a "known dangerous artificial condition" for which a landowner might be liable.

The Legislature expresses its intent that the specific inclusion of rock climbing does not imply that other related recreational activities are not also covered by these immunity provisions.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The current law may already protect landowners from liability, but without express language in the statute, some landowners are unwilling to allow climbing on their lands. Climbers should be willing to accept the risk of their sport, and the bill creates a fair exchange for the opportunity to climb. We need to promote as much use of our outdoor recreational opportunities as we can.

Testimony Against: None.

Testified: Representative Delvin, prime sponsor; Andy Fitz, The Access Fund; Jack Nelson; Rob Nelson; and William Painter.