

HOUSE BILL REPORT

HB 2150

As Reported by House Committee On:
Judiciary

Title: An act relating to encouraging recreational access to private property.

Brief Description: Encouraging recreational access to private property.

Sponsors: Representative Blake.

Brief History:

Committee Activity:

Judiciary: 1/14/14, 1/21/14 [DPS].

Brief Summary of Substitute Bill

- Makes the following changes to the Recreational Land Use Act:
 - Allows property owners who provide recreational use of their land to exclude individuals who violate the conditions of access.
 - Allows private landowners of land subject to current use valuation for property tax purposes under either the program for forest lands or program for open space lands, farm and agricultural lands, and timber lands, to assess a low annual fee for recreational use.
 - Permits landowners to accept government payments to facilitate or manage access.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Jenna Zwang (786-7290) and Cece Clynch (786-7195).

Background:

Landowner Duties, Generally.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under Washington tort law, a landowner's duty of care to persons entering his or her land depends on the status of the entering party: invitee, licensee, or trespasser. Generally, landowners owe trespassers and licensees only a duty to refrain from willfully or wantonly injuring them. Landowners owe invitees an affirmative duty to keep the land in reasonably safe condition. This includes an affirmative duty to inspect the premises in order to discover any dangerous conditions, and landowners may be held liable for unintentionally causing harm through acts of negligence, gross negligence, or recklessness.

Recreational Land Use Act.

Originally enacted in 1967, the Recreational Land Use Act prescribes an alternative framework for determining landowner liability in certain cases. The purpose of the recreational use statute is to "encourage property owners to provide free recreational areas for public use by limiting a property owner's liability for injuries to recreational users."

A landowner who allows the public to use his or her land for certain recreational purposes will be immune from liability for unintentional injuries suffered by a recreational user. The immunity does not apply, however, to injuries caused by a "known dangerous artificial latent condition" on land where warning signs have not been posted. A landowner must have actual (as opposed to constructive) knowledge that a condition that is not readily apparent to a recreational user poses an unreasonable risk of harm in order for it to be considered known, dangerous and latent.

Immunity extends to landowners who allow activities that include the following:

- cutting, gathering, and removing firewood;
- hunting, fishing, and clam digging;
- camping and picnicking;
- swimming, hiking, rock climbing, and horseback riding;
- bicycling, skateboarding, and other non-motorized wheel-based activities;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating, kayaking, canoeing, rafting, and other water sports;
- viewing historical, archeological, or scenic sites;
- winter sports; and
- hang gliding and paragliding.

Both public and private landowners who allow public use without a fee are protected. There are three exceptions to the no-fee requirement: (1) landowners may assess a \$25 administrative fee for the cutting, gathering, and removing of firewood; (2) landowners may charge up to \$20 per person, per day for access to public off-road vehicle facilities; and (3) certain passes and permits required by state agencies do not qualify as fees.

Summary of Substitute Bill:

Landowners may exclude individuals who violate rules of access from their land.

In addition to the enumerated fee exceptions for landowners, the following exceptions are added to the no-fee requirement:

- Private landowners may annually charge up to \$25 per person, per year for recreational use, including hunting and fishing access, on adjoining parcels owned by a single landowner as long as the land is subject to current use valuation for property tax purposes under either the program for forest lands or the program for open space lands, farm and agricultural lands, and timber lands and no limits are placed on the number of participants granted recreational access to the parcels.
- Landowners may also receive payments from state or local governments to facilitate or manage public access.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) removes written notice, as a substitute for warning signs, for known artificial latent conditions; (2) strikes the provision granting immunity to a landowner for injuries to a third party caused by the intentional, reckless, or negligent acts of recreational users; and (3) allows only private landowners to assess an up to \$25 per person, per year charge for recreational use and only so long as the land is subject to current use valuation for property tax purposes under either the program for forest lands or the program for open space lands, farm and agricultural lands, and timber lands and no limits are placed on the number of participants granted recreational access to the parcels.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) There is concern about families and people who can't afford expensive use passes not being able to access recreational land. The clause that allows the state to purchase broad access to a landscape may take care of some of the concerns that the landowners have. This bill is a carrot in order to keep local residents from being priced out of access.

Recreationalists are affected by this law because it encourages landowners to not just put their gates up. In most other states, no owner owes any duty to the recreational user or incurs liability to person or property from a recreational user.

Access for hunters is very important. One issue that has arisen is retention and recruitment of hunters. When hunters are surveyed as to why they no longer hunt, one of the key issues is that recreational access has been reduced.

There's a long history of allowing access to working forests in Washington. This is changing, however, and some landowners are charging hundreds of dollars and limiting the number of persons allowed on their land.

(In support with amendment(s)) There needs to be a clarification of Fish and Wildlife Cooperative projects, and if they qualify under the Recreational Land Use Act, as many of these projects include activities on private land that fall outside the traditional definition of recreation.

(Opposed) The recreational immunity statute is the broadest and most widely applied immunity statute on the books in Washington. This takes immunity into two areas that are brand new: the business invitee relationship and the failure to warn of known dangerous conditions. This allows landowners to provide no notice of dangerous conditions to the public whatsoever. This statute doesn't just apply to naturally occurring lands, but to city parks, bicycle trails and virtually any commercial establishment. This is not the way the statute was originally intended.

Persons Testifying: (In support) Representative Blake, prime sponsor; Jacob Perry; David Ware, Department of Fish and Wildlife; and Patti Case, Green Diamond Resource Company.

(In support with amendment(s)) Kathleen Colling, PacifiCorp.

(Opposed) Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.