
Judiciary Committee

HB 1699

Title: An act relating to legal immunity in instances of citizen-initiated wildfire control.

Brief Description: Addressing legal immunity in instances of citizen-initiated wildfire control.

Sponsors: Representatives Blake, Kretz, Orcutt, Dent, Short and Condotta.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Permits a person to enter public or private property under certain circumstances for the purpose of attempting to extinguish or control a wildfire.• Grants civil and criminal immunity for the direct or proximate adverse impacts resulting from a person's attempt to control or extinguish a wildfire.

Hearing Date: 2/11/15

Staff: Daniel Rusk (786-7290) and Omeara Harrington (786-7136).

Background:

Trespass Liability.

Generally, an individual may be civilly and criminally liable for trespass if he or she enters or remains unlawfully on another's land.

Criminal Liability. A person is guilty of criminal trespass if he or she knowingly enters or remains unlawfully on the premises or building of another. The unlawful entry into a building is a gross misdemeanor, while all other trespasses are misdemeanors.

Civil Liability. An individual may be liable for civil trespass if he or she enters or remains on the land of another without the landowner's consent. Under common law, trespass is an intrusion onto the property of another that interferes with the other person's right to exclusive possession of the property. A person is liable for trespass, even if no damage is caused, if the person,

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without privilege to do so, intentionally: (a) enters another's land, or causes a thing to do so; (b) remains on the land; or (c) fails to remove a thing which the person is under the duty to remove. If the person's negligence or recklessness causes an object to enter another's land, the landowner must show that damage occurred in order to hold the person liable.

Defenses. The Washington Courts have recognized the common law defense of necessity in some cases relating to trespass and resulting property damage. In the civil context, when immediate action is necessary in order to prevent a great public danger, such as a fire or flood, an individual may enter, and if necessary, destroy the property of another. If such conditions exist, and the individual uses reasonable judgment, he or she is not liable to the owner for damages.

Landowner Liability.

In certain circumstances, landowners owe a duty of care to individuals that enter their land. The degree of care owed depends on whether the individual has been invited onto the land or is a trespasser. Landowners owe a duty of reasonable care to invitees (individuals whom the landowner invited onto his or her land). Landowners are only responsible to protect licensees (those permitted to use the landowner's property for the licensee's benefit) from hazards that the licensee does not know or have reason to know about. If a trespasser enters a landowner's land, the landowner owes no duty of care, but must refrain from acting with willful or wanton misconduct toward the trespasser.

A landowner may be liable for damages caused by fires started on his or her land. A person who lawfully kindles a fire or intentionally starts a fire, or who has knowledge of a fire on his or her land, must exercise ordinary and reasonable care to prevent the spread of the fire. A landowner who negligently fails to prevent the spread of fire from the land is liable for all damages proximately caused by the person's negligence.

Summary of Bill:

A person may enter public or private land for the purposes of attempting to extinguish or control a wildfire, and may not be held civilly or criminally liable for the proximate or direct adverse impacts resulting from the access. While on the land, the individual's access is limited to those activities necessary to extinguish or control the wildfire. An individual may enter another's land if:

- there is an active fire on the land;
- the individual has a reasonable belief that the conditions are creating an emergency situation;
- the individual has a reasonable belief that preventative measures would control the wildfire;
- the individual believes that he or she can take appropriate measures; and
- the individual notifies the owner or emergency personnel before or after entering the land.

Immunity does not apply if the individual was grossly negligent, or acted with willful or wanton misconduct. Nor may the individual materially benefit from accessing the land.

A court may not impose civil or criminal liability on an owner, lessee, or occupant of land for the direct or proximate adverse impacts resulting from a person's access to the land for the purpose of extinguishing or controlling a wildfire. This includes, but is not limited to, impacts to:

- the individual's personal property, including loss of life;
- any structures or land alterations caused by the individual;
- other landholdings; and
- environmental resources.

Immunity to the landowner, lessee, or occupant does not apply if the owner, lessee, or occupant: is responsible for starting the fire on his or her land and failing to prevent it from spreading; acted with gross negligence; or acted with willful or wanton misconduct.

Appropriation: None.

Fiscal Note: Not requested.

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