
HOUSE BILL 2243

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Blake and Kretz

Read first time 01/15/14. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to encouraging private landowners to allow public
2 access to their land; amending RCW 4.24.210 and 9A.52.090; adding a new
3 section to chapter 82.04 RCW; adding a new chapter to Title 79A RCW;
4 and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Commission" means the state conservation commission.

9 (2) "Department" means the department of fish and wildlife.

10 (3) "Participating landowner" means a private landowner who has
11 contractually agreed with the commission under section 3 of this act to
12 allow public recreational access on private land.

13 NEW SECTION. **Sec. 2.** (1) The commission must conduct outreach
14 with private landowners in an attempt to establish a network of private
15 landholdings upon which the public is invited by the owners to pursue
16 recreational activities, including hunting and fishing, consistent with
17 this chapter.

1 (2) Upon receiving commitments of participation by a number of
2 landowners representing a number of acres determined by the commission
3 to be significant enough to move forward, the commission must initiate
4 and manage public access on the participating private lands consistent
5 with this chapter.

6 (3) The commission must consult with the department to identify the
7 types of land suitable for hunting and fishing access.

8 NEW SECTION. **Sec. 3.** (1) Landowners participating in public
9 access under this section must sign a contract with the commission
10 outlining the responsibilities and expectations of the landowner and
11 the commission.

12 (2) Participating landowners are expected to allow public
13 recreational access on portions of landholdings specifically identified
14 for this purpose. Landowners are not required to allow access on all
15 contiguous lands in order to participate under this chapter and may
16 close otherwise included parcels on a temporary basis when the
17 landowner's use of the land is incompatible with public access or on a
18 seasonal basis.

19 (3) Except as otherwise provided in this chapter, the agreement
20 between a participating landowner and the commission must allow for
21 unlimited recreational access on all included landholdings.

22 (4) Participating landowners are entitled to a share of revenue
23 generated by permit sales under section 4 of this act in consideration
24 for allowing public access. However, the landowner may not implement
25 any other access-for-fee agreements.

26 (5) Participation in the public access program is voluntary and no
27 landowner may be compelled to participate.

28 NEW SECTION. **Sec. 4.** (1) Only individuals in possession of a
29 valid annual public-private access permit may access private lands
30 identified for public access by the commission under this section for
31 the purposes of recreation.

32 (2) Annual public-private access permits must be made available for
33 purchase through the department's automated licensing system consistent
34 with RCW 77.32.050. The cost of a public-private access permit is
35 thirty-five dollars.

1 (3) All revenue collected from the sales of public-private access
2 permits must be deposited into the public-private recreational access
3 account created in section 5 of this act.

4 NEW SECTION. **Sec. 5.** (1) The public-private recreational access
5 account is created in the state treasury. All receipts from the sales
6 of public-private access permits under section 4 of this act must be
7 deposited in the account. Moneys in the account may be spent only
8 after appropriation.

9 (2) Expenditures from the account may only be used as follows:

10 (a) Twenty percent of revenue in the account may be used by the
11 commission to reach out to additional landowners for participation in
12 the program created in this chapter and to manage all related contract
13 management issues;

14 (b) Twenty percent of revenue in the account may be used by the
15 department for enforcement efforts on land owned by private landowners
16 participating in the program created under this chapter; and

17 (c) Sixty percent of revenue in the account may be used by the
18 commission to reimburse landowners participating in the access program
19 created by this chapter in consideration for the use of their land by
20 public recreationalists.

21 (3) The commission must determine by rule how reimbursement amounts
22 to participating landowners will be determined.

23 NEW SECTION. **Sec. 6.** (1) The commission may specify rules or
24 policies for public recreationists to follow when recreating on land
25 owned by a participating landowner. The rules and policies must be
26 applicable to all lands included for public access under this section
27 and, to the degree practicable, be developed in coordination with the
28 participating landowners.

29 (2) Any violation of a rule or policy developed under this section
30 is a natural resources infraction subject to the provisions of chapter
31 7.84 RCW.

32 NEW SECTION. **Sec. 7.** (1) Any person who is found recreating on
33 the land of a participating landowner without a valid public-private
34 access permit is guilty of criminal trespass in the second degree as
35 provided in RCW 9A.52.080.

1 (2) Any person who is found liable under RCW 4.24.630 or who
2 commits a violation of any of the following while on the land of a
3 participating landowner shall have his or her public-private access
4 permit immediately confiscated and is prohibited from possessing
5 another public-private access permit for five years:

6 (a) Any violation of Title 77 RCW;

7 (b) Any violation of RCW 70.93.060;

8 (c) Any violation of chapter 9A.48 RCW;

9 (d) Any violation of RCW 9.91.150; or

10 (e) Any rule or policy developed by the commission under section 6
11 of this act.

12 (3) This chapter may be enforced by the department and any local
13 law enforcement agency.

14 **Sec. 8.** RCW 4.24.210 and 2012 c 15 s 1 are each amended to read as
15 follows:

16 (1) Except as otherwise provided in subsection (3) (~~(or (4))~~) of
17 this section, any public or private landowners, hydroelectric project
18 owners, or others in lawful possession and control of any lands whether
19 designated resource, rural, or urban, or water areas or channels and
20 lands adjacent to such areas or channels, who allow members of the
21 public to use them for the purposes of outdoor recreation, which term
22 includes, but is not limited to, the cutting, gathering, and removing
23 of firewood by private persons for their personal use without
24 purchasing the firewood from the landowner, hunting, fishing, camping,
25 picnicking, swimming, hiking, bicycling, skateboarding or other
26 nonmotorized wheel-based activities, aviation activities including, but
27 not limited to, the operation of airplanes, ultra-light airplanes, hang
28 gliders, parachutes, and paragliders, rock climbing, the riding of
29 horses or other animals, clam digging, pleasure driving of off-road
30 vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing,
31 rafting, nature study, winter or water sports, viewing or enjoying
32 historical, archaeological, scenic, or scientific sites, without
33 charging a fee of any kind therefor, shall not be liable for
34 unintentional injuries to such users.

35 (2) Except as otherwise provided in subsection (3) (~~(or (4))~~) of
36 this section, any public or private landowner or others in lawful
37 possession and control of any lands whether rural or urban, or water

1 areas or channels and lands adjacent to such areas or channels, who
2 offer or allow such land to be used for purposes of a fish or wildlife
3 cooperative project, or allow access to such land for cleanup of litter
4 or other solid waste, shall not be liable for unintentional injuries to
5 any volunteer group or to any other users.

6 ~~(3) ((Any public or private landowner, or others in lawful
7 possession and control of the land, may charge an administrative fee of
8 up to twenty five dollars for the cutting, gathering, and removing of
9 firewood from the land.~~

10 ~~(4)(a))~~ Nothing in this section shall prevent the liability of a
11 landowner or others in lawful possession and control for injuries
12 sustained to users by reason of a known dangerous artificial latent
13 condition for which warning signs have not been conspicuously posted(~~(-~~

14 ~~(i))~~ or written notice has not been provided to the user.
15 However:

16 (a) A fixed anchor used in rock climbing and put in place by
17 someone other than a landowner is not a known dangerous artificial
18 latent condition and a landowner under subsection (1) of this section
19 shall not be liable for unintentional injuries resulting from the
20 condition or use of such an anchor(~~(-~~

21 ~~(ii))~~);

22 (b) Releasing water or flows and making waterways or channels
23 available for kayaking, canoeing, or rafting purposes pursuant to and
24 in substantial compliance with a hydroelectric license issued by the
25 federal energy regulatory commission, and making adjacent lands
26 available for purposes of allowing viewing of such activities, does not
27 create a known dangerous artificial latent condition and hydroelectric
28 project owners under subsection (1) of this section shall not be liable
29 for unintentional injuries to the recreational users and observers
30 resulting from such releases and activities.

31 ~~((b))~~ (4) Nothing in RCW 4.24.200 and this section limits or
32 expands in any way the doctrine of attractive nuisance.

33 ~~((e))~~ (5) Usage by members of the public, volunteer groups, or
34 other users is permissive and does not support any claim of adverse
35 possession.

36 ~~((5))~~ (6) Nothing in this section prevents a landowner from
37 excluding access to individuals who violate rules or conditions of
38 access established by the landowner.

1 (7) A landowner who allows recreational access consistent with
2 chapter 79A.-- RCW (the new chapter created in section 11 of this act)
3 is not liable to a third party for the intentional, reckless, or
4 negligent acts of recreational users granted access to the property.

5 (8) For purposes of this section, the following are not fees:

6 (a) A license or permit issued for statewide use under authority of
7 chapter 79A.05 RCW or Title 77 RCW;

8 (b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
9 79A.80.040; (~~and~~)

10 (c) A daily charge not to exceed twenty dollars per person, per
11 day, for access to a publicly owned ORV sports park, as defined in RCW
12 46.09.310, or other public facility accessed by a highway, street, or
13 nonhighway road for the purposes of off-road vehicle use;

14 (d) Payments from state or local governments to a landowner to
15 facilitate or manage public access, including distributions from the
16 public-private recreational access account created in section 5 of this
17 act; and

18 (e) A daily charge of up to twenty-five dollars for the cutting,
19 gathering, and removing of firewood.

20 NEW SECTION. Sec. 9. A new section is added to chapter 82.04 RCW
21 to read as follows:

22 This chapter does not apply to amounts received by businesses from
23 the state conservation commission through the public-private
24 recreational access account created in section 5 of this act in
25 consideration for providing public recreational access under chapter
26 79A.-- RCW (the new chapter created in section 11 of this act).

27 **Sec. 10.** RCW 9A.52.090 and 2011 c 336 s 374 are each amended to
28 read as follows:

29 In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a
30 defense that:

31 (1) A building involved in an offense under RCW 9A.52.070 was
32 abandoned; or

33 (2) The premises were at the time open to members of the public and
34 the actor complied with all lawful conditions imposed on access to or
35 remaining in the premises, including the possession of a valid public-
36 private access permit issued under section 4 of this act; or

1 (3) The actor reasonably believed that the owner of the premises,
2 or other person empowered to license access thereto, would have
3 licensed him or her to enter or remain; or

4 (4) The actor was attempting to serve legal process which includes
5 any document required or allowed to be served upon persons or property,
6 by any statute, rule, ordinance, regulation, or court order, excluding
7 delivery by the mails of the United States. This defense applies only
8 if the actor did not enter into a private residence or other building
9 not open to the public and the entry onto the premises was reasonable
10 and necessary for service of the legal process.

11 NEW SECTION. **Sec. 11.** Sections 1 through 7 of this act constitute
12 a new chapter in Title 79A RCW.

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