S-3637.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6384**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators King, Roach, Litzow, Rivers, Pearson, Takko, and Hobbs

AN ACT Relating to clarifying that potential dual purposes of land does not reduce the scope of immunity provided by RCW 4.24.210; amending RCW 4.24.210; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that there is a great public value in encouraging bicycling as an outdoor recreational activity. The encouragement of bicycling is consistent with the state's public health goals, such as reducing obesity, and historical and ongoing efforts to improve outdoor recreational opportunities in Washington. Modern and plentiful bicycle trails and other related facilities also add to the quality of life in Washington that assists local companies recruit and retain talented employees. Finally, as evidenced by RCW 43.43.390, bicycling is an important alternative component of the state's transportation infrastructure. As such, bicycling, by design, serves the dual purpose of recreation and transportation.

(2) The legislature further finds that, like all forms of recreation in the state, the demand for bicycling facilities is increasing and will continue to increase with the state's population. The state should enact policies that remove disincentives for state agencies, local governments, and private landowners to invest in recreational infrastructure.

(3) The legislature further finds that the state supreme court has created a disincentive for recreational facility investments in its recent interpretation of RCW 4.24.210, the state's recreational immunity statute. The court's interpretation of the nature and role of bicycling and bicycle paths, as applied to RCW 4.24.210, creates the type of potential liability for local government, policymakers, and private landowners that discourages any investments in bicycling or other recreational trails and facilities and encourages decisions to revoke existing access privileges. This outcome is counter to the recreational, economic, and health policies and objectives of the state that underlie RCW 4.24.210.

(4) It is therefore the intent of the legislature to overrule the state supreme court's holding in *Camicia v. Howard S. Wright Construction Company*, No. 85583-8 (January 30, 2014) and establish the changes made to RCW 4.24.210 by section 2 of this act as the state policy on how the immunity provided by RCW 4.24.210 applies to bicycling as an activity and to land that may serve additional purposes beyond recreation.

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

(1)(a) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, ((~~which~~)) without charging a fee of any kind, is not liable for unintentional injuries to the users.

(b) The applicability of this section is not limited by potential or actual alternative, nonrecreational purposes or uses of the underlying land.

(c) For the purposes of this section, the term "outdoor recreation" includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, ((~~bicycling,~~)) skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hang gliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites((~~, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users~~)).

(d) The term "outdoor recreation" also includes bicycling in any area other than a state highway, county road, city street, or designated bicycle lane located within a state highway, county road, or city street, regardless of whether the activity or location also serves a transportation purpose.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

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

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

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

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

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

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

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

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

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

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

**--- END ---**