

HOUSE BILL ANALYSIS

SSB 5254

Title: An act relating to the limitation of liability of owners or others in possession of land and water areas for injuries to recreational users.

Brief Description: Limiting liability of owners or possessors for injuries to recreational users.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Long, Roach, Haugen, Jacobsen, Fraser, Zarelli, Strannigan, Deccio, Thibaudeau, Wood, Fairley, Goings and Winsley).

HOUSE COMMITTEE ON LAW & JUSTICE

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 unintentional harm as well. 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:

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

Summary of Bill: Additional activities are included in the specified recreational uses that qualify as "outdoor recreation" for purposes of the statute that limits the liability of landowners. These activities are skateboarding and other non-motorized wheel-based activities, hanggliding, and paragliding.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research