

---

SENATE BILL 6384

---

State of Washington                      64th Legislature                      2016 Regular Session

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

Read first time 01/19/16. Referred to Committee on Transportation.

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

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

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

17            (2) The legislature further finds that, like all forms of  
18 recreation in the state, the demand for bicycling facilities is  
19 increasing and will continue to increase with the state's population.  
20 The state should enact policies that remove disincentives for state

1 agencies, local governments, and private landowners to invest in  
2 recreational infrastructure.

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

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

21 **Sec. 2.** RCW 4.24.210 and 2012 c 15 s 1 are each amended to read  
22 as follows:

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

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

34 (c) For the purposes of this section, the term "outdoor  
35 recreation" includes, but is not limited to, the cutting, gathering,  
36 and removing of firewood by private persons for their personal use  
37 without purchasing the firewood from the landowner, hunting, fishing,  
38 camping, picnicking, swimming, hiking, ~~((bicycling,))~~ skateboarding  
39 or other nonmotorized wheel-based activities, aviation activities

1 including, but not limited to, the operation of airplanes, ultra-  
2 light airplanes, hang gliders, parachutes, and paragliders, rock  
3 climbing, the riding of horses or other animals, clam digging,  
4 pleasure driving of off-road vehicles, snowmobiles, and other  
5 vehicles, boating, kayaking, canoeing, rafting, nature study, winter  
6 or water sports, viewing or enjoying historical, archaeological,  
7 scenic, or scientific sites(~~(, without charging a fee of any kind~~  
8 ~~therefor, shall not be liable for unintentional injuries to such~~  
9 ~~users)).~~

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

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

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

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

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

36 (ii) Releasing water or flows and making waterways or channels  
37 available for kayaking, canoeing, or rafting purposes pursuant to and  
38 in substantial compliance with a hydroelectric license issued by the  
39 federal energy regulatory commission, and making adjacent lands  
40 available for purposes of allowing viewing of such activities, does

1 not create a known dangerous artificial latent condition and  
2 hydroelectric project owners under subsection (1) of this section  
3 shall not be liable for unintentional injuries to the recreational  
4 users and observers resulting from such releases and activities.

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

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

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

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

13 (b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or  
14 79A.80.040; and

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

--- END ---