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**Judiciary Committee**

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**SB 5279**

**Title:** An act relating to the liability of owners of recreational land.

**Brief Description:** Modifying provisions with regard to recreational activities on certain lands.

**Sponsors:** Senator Jacobsen.

**Brief Summary of Bill**

- Allows private landowners to charge access fees and still retain immunity for all but intentional harm done to recreational users so long as the fees are used for land management.

**Hearing Date:** 3/23/05

**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 unintentionally causing harm through acts of negligence, gross negligence, or recklessness, as well as through intentional acts. 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.

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 had 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:

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

The insulation from liability is generally not available if a fee of any kind is charged to users of the land, except that landowners are specifically allowed to charge a fee of up to \$25 for cutting, gathering, and removing firewood. In addition, a license or permit issued for statewide use under the fish and wildlife or recreational lands statutes is not considered a fee for purposes of the recreational use immunity statute.

**Summary of Bill:**

Private landowners may charge a daily, seasonal, or annual fee for access to land for recreational activities and still retain immunity from liability for all but intentional harm so long as all revenue from the fee is used for land management.

**Appropriation:** None.

**Fiscal Note:** Available.

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