

SENATE BILL NO. 132—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S
SUBCOMMITTEE TO STUDY THE
PROTECTION OF NATURAL TREASURES)

FEBRUARY 21, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the liability of trailbuilding organizations and landowners, lessees and occupants of land to persons using premises for recreational activities. (BDR 3-212)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil liability; revising the provisions governing the liability of landowners, lessees and occupants of land where recreational trails are located; providing that a trailbuilding organization is not liable to a person using a recreational trail under certain circumstances; requiring a person who brings a tort action related to a recreational trail to pay attorney’s fees and costs if the person does not prevail in the action; revising the definition of a recreational activity for the purposes of the provision governing liability to persons using premises for a recreational activity; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 This bill amends existing law, which generally provides that landowners,
- 2 lessees and occupants of premises used for recreational activities owe no duty to
- 3 keep the premises safe for such recreational activities or to warn about any
- 4 hazardous condition on the premises, to provide specifically that landowners,
- 5 lessees and occupants of premises where recreational trails are located owe no
- 6 duty to keep the recreational trails safe or to warn about any hazardous condition.



(NRS 41.510) This bill also provides that trailbuilding organizations who design, construct, maintain or improve recreational trails in accordance with generally accepted standards of safety owe no duty to keep the recreational trails safe or to warn about any hazardous condition.

Additionally, this bill provides that if a person brings a tort action arising out of the design, construction, maintenance or improvement of a recreational trail, the person is required to pay the attorney's fees and costs of any defendant if the person does not ultimately prevail in the action. Furthermore, this bill amends existing law, which includes a nonexclusive list of activities that are considered recreational activities for the purposes of the provision governing liability to persons using premises for recreational activities, to provide specifically that riding a road or mountain bicycle, cross-county skiing and snowshoeing are recreational activities. (NRS 41.510)

Finally, to assist in the successful completion of the Tahoe-Pyramid Bikeway, this bill includes a preamble encouraging the entities and persons who own public and private land along the route of the Tahoe-Pyramid Bikeway to grant necessary easements across, or access to, the land that they own along the route.

WHEREAS, Bicycling is a healthy recreational activity that is important to Nevada's quality of life; and

WHEREAS, Bicycling promotes the enjoyment and appreciation of the outdoor areas of Nevada; and

WHEREAS, Bicycling helps to meet the needs for outdoor recreation of an expanding population; and

WHEREAS, Recreational trails such as the Tahoe-Pyramid Bikeway will allow residents to enjoy and appreciate the outdoor areas of northern Nevada while engaging in healthy recreational activity; and

WHEREAS, The Tahoe-Pyramid Bikeway will follow the Truckee River from its source at Lake Tahoe to its terminus at Pyramid Lake, will descend over 2,000 feet in 116 miles and will cross a variety of public and private land spanning five counties in two states; and

WHEREAS, The public and private land along the route of the Tahoe-Pyramid Bikeway is owned by various public entities, commercial entities and private persons, including the University of Nevada, Reno, railroad companies, utility companies and private landowners; and

WHEREAS, For the Tahoe-Pyramid Bikeway to be completed successfully, it will be necessary to obtain easements across, and access to, such public and private land along the route; and

WHEREAS, To assist in the successful completion of the Tahoe-Pyramid Bikeway, the Legislature hereby encourages the entities and persons who own public and private land along the route of the Tahoe-Pyramid Bikeway to grant necessary easements across, or access to, the land that they own along the route; now, therefore,



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 41.510 is hereby amended to read as follows:

41.510 1. Except as otherwise provided in subsection ~~3.1~~ 5, an owner of any estate or interest in any premises, or a lessee or an occupant of any premises, owes no duty to keep the premises safe for entry or use by others for participating in any recreational activity, or to give warning of any hazardous condition, activity or use of any structure on the premises to persons entering for those purposes.

2. *Except as otherwise provided in subsection 5, notwithstanding any other provision of law:*

(a) *An owner of any estate or interest in any premises upon which a recreational trail has been constructed, established through continued use, maintained or improved, or a lessee or an occupant of any premises upon which a recreational trail has been constructed, established through continued use, maintained or improved; or*

(b) *A trailbuilding organization, or any employee of, volunteer for, or other person performing services on behalf of, the trailbuilding organization, that designs, constructs, maintains or improves a recreational trail in accordance with generally accepted standards of safety regarding the design, construction, maintenance and improvement of a recreational trail,*

↪ owes no duty to keep the premises or recreational trail safe for entry or use by others for participating in any recreational activity, or to give warning of any hazardous condition, activity or use of any structure on the premises or recreational trail to persons entering for those purposes.

3. *If an action sounding in tort and arising out of the design, construction, maintenance or improvement of a recreational trail is brought against:*

(a) *An owner of any estate or interest in any premises upon which a recreational trail has been constructed, established through continued use, maintained or improved, or a lessee or an occupant of any premises upon which a recreational trail has been constructed, established through continued use, maintained or improved; or*

(b) *A trailbuilding organization, or any employee of, volunteer for, or other person performing services on behalf of, the trailbuilding organization,*



1 ↪ *the court shall award reasonable attorney's fees and costs to*
2 *any person against whom the action is brought if the person who*
3 *brought the action does not prevail in the action.*

4 4. Except as otherwise provided in subsection ~~3.1~~ 5, if an
5 owner, lessee or occupant of premises gives permission to another
6 person to participate in recreational activities, upon his premises:

7 (a) He does not thereby extend any assurance that the premises
8 are safe for that purpose or assume responsibility for or incur
9 liability for any injury to person or property caused by any act of
10 persons to whom the permission is granted.

11 (b) That person does not thereby acquire any property rights in
12 or rights of easement to the premises.

13 ~~3.1~~ 5. This section does not:

14 (a) Limit the liability which would otherwise exist for:

15 (1) Willful or malicious failure to guard, or to warn against, a
16 dangerous condition, use, structure or activity.

17 (2) Injury suffered in any case where permission to
18 participate in recreational activities ~~1.1~~ was granted for a
19 consideration other than the consideration, if any, paid to the
20 landowner by the State or any subdivision thereof. For the purposes
21 of this subparagraph, the price paid for a game tag sold pursuant to
22 NRS 502.145 by an owner, lessee or manager of the premises shall
23 not be deemed consideration given for permission to hunt on the
24 premises.

25 (3) Injury caused by acts of persons to whom permission to
26 participate in recreational activities was granted, to other persons as
27 to whom the person granting permission, or the owner, lessee or
28 occupant of the premises, owed a duty to keep the premises safe or
29 to warn of danger.

30 (b) Create a duty of care or ground of liability for injury to
31 person or property.

32 ~~1.1~~ 6. As used in this section ~~1.1~~ ~~recreational~~ :

33 (a) **"Recreational** activity" includes, but is not limited to:

34 ~~1(a)~~ (1) Hunting, fishing or trapping;

35 ~~1(b)~~ (2) Camping, hiking or picnicking;

36 ~~1(c)~~ (3) Sightseeing or viewing or enjoying archaeological,
37 scientific, natural or scientific sites;

38 ~~1(d)~~ (4) Hang gliding or para-gliding;

39 ~~1(e)~~ (5) Spelunking;

40 ~~1(f)~~ (6) Collecting rocks;

41 ~~1(g)~~ (7) Participation in winter sports, including *cross-country*
42 *skiing, snowshoeing or* riding a snowmobile, or water sports;

43 ~~1(h)~~ (8) Riding animals ~~1(a)~~ , *riding* in vehicles ~~1.1~~ *or riding a*
44 *road or mountain bicycle;*

45 ~~1(i)~~ (9) Studying nature;



- 1 ~~(10)~~ (10) Gleaning;
2 ~~(11)~~ (11) Recreational gardening; and
3 ~~(12)~~ (12) Crossing over to public land or land dedicated for
4 public use.

5 (b) *“Recreational trail” means any linear corridor and any*
6 *adjacent support parcel on land or water providing public access*
7 *for any recreational activity.*

8 (c) *“Trailbuilding organization” means any nonprofit*
9 *corporation, association or organization whose sole mission is to*
10 *design, construct, maintain or improve a recreational trail.*

11 **Sec. 2.** The amendatory provisions of this act apply to a cause
12 of action that accrues on or after October 1, 2007.

