

# Senate Bill 709

Sponsored by Senators JOHNSON, BAERTSCHIGER JR, ROBLAN, EDWARDS; Senators BATES, BEYER, BOQUIST, CLOSE, DEVLIN, FERRIOLI, GEORGE, GIROD, HANSELL, KRUSE, MONNES ANDERSON, PROZANSKI, STARR, WINTERS

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows person holding interest in property to recover economic and property damages resulting from fire occurring due to certain statutory or rule violations or resulting from fire escaping from land used or capable of being used for growing forest tree species. Allows recovery of twice amount of economic and property damages if fire resulted from recklessness, gross negligence, willfulness or malice. Makes person who causes fire liable for payment of fire fighting costs. Prohibits other liability resulting from fire.

Prohibits use of *res ipsa loquitur* to establish negligence resulting in fire. Limits liability for economic and property damages if fire originated due to act of God.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to civil actions regarding forest fires; creating new provisions; amending ORS 105.810,  
3 197.277, 477.095 and 527.715; repealing ORS 477.090; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS**  
6 **chapter 477.**

7 **SECTION 2. (1) As used in this section:**

8 (a) **"Economic and property damage" means the sum of:**

9 (A) **The lesser of the difference in the fair market value of property immediately before**  
10 **and immediately after a fire or the cost of restoring property to the condition the property**  
11 **was in immediately before a fire; and**

12 (B) **Any other objectively verifiable monetary losses.**

13 (b) **"Escaped fire" means a fire that originated on land used or capable of being used for**  
14 **growing forest tree species regardless of the existing use of the land.**

15 (c) **"Fair market value" means the amount, as determined by a state certified appraiser,**  
16 **that a willing buyer would pay to a willing seller for property in an arms-length transaction**  
17 **if both parties were fully informed about all advantages and disadvantages of the property**  
18 **and neither party is acting under a compulsion to buy or sell.**

19 (d) **"Forest tree species" means a tree species that is capable of producing logs, fiber or**  
20 **other wood materials that are suitable for the production of lumber, sheeting, pulp, firewood**  
21 **or other commercial forest products.**

22 (e) **"State certified appraiser" means an individual who has been certified as a state**  
23 **certified appraiser under ORS 674.310 and is qualified to appraise the property that is the**  
24 **subject of a fair market value determination.**

25 (2) **Except as provided in ORS 477.095 and section 3 of this 2013 Act, if property belonging**  
26 **to the United States or a state agency, local government or private landowner is damaged**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 due to a fire that results from a violation of this chapter or of rules adopted under ORS  
2 526.016 or 526.041 or due to an escaped fire, a person who holds an interest in the property  
3 may recover in a civil action:

4 (a) The amount of economic and property damages, if the fire did not occur as the result  
5 of recklessness, gross negligence, willfulness or malice; or

6 (b) Twice the amount of economic and property damages, if the fire occurred as the re-  
7 sult of recklessness, gross negligence, willfulness or malice.

8 (3) Except as provided in ORS 477.095 and subject to any other provision of this chapter  
9 limiting the recovery of fire fighting costs, a person who causes a fire through a violation  
10 of this chapter or of rules adopted under ORS 526.016 or 526.041 or causes an escaped fire is  
11 liable to any person or entity for the full amount of all unreimbursed expenses incurred by  
12 the person or entity in fighting the fire.

13 (4) The remedies provided under this section are in addition to any available criminal or  
14 civil penalties that may be assessed for the violation of a statute or rule but, subject to Ar-  
15 ticle I, section 10, of the Oregon Constitution, are the exclusive remedies for civil liability  
16 based upon a fire that results from a violation of this chapter or of rules adopted under ORS  
17 526.016 or 526.041 or based upon an escaped fire. This subsection does not prohibit the  
18 bringing of any cross claim, counterclaim or joinder of parties. This subsection does not af-  
19 fect the applicability of ORS 31.600 to an action.

20 (5) This section does not create a new cause of action or alter any existing cause of  
21 action.

22 **SECTION 3.** (1) As used in this section, “escaped fire” has the meaning given that term  
23 in section 2 of this 2013 Act.

24 (2) The doctrine of *res ipsa loquitur* may not be used to infer negligence for the purpose  
25 of establishing liability due to a fire that results from a violation of this chapter or of rules  
26 adopted under ORS 526.016 or 526.041 or due to an escaped fire.

27 (3) If a fire occurs through an act of God, except to the extent that the person causes  
28 or contributes to the spreading of the fire, a person is not liable in a civil action for injury  
29 to or destruction of property by the fire that is due to a violation of this chapter or of rules  
30 adopted under ORS 526.016 or 526.041 or due to an escaped fire.

31 **SECTION 4.** ORS 105.810 is amended to read:

32 105.810. (1) Except as provided in [ORS 477.090] sections 2 and 3 of this 2013 Act and sub-  
33 sections (4) to (7) of this section, whenever any person, without lawful authority, willfully injures  
34 or severs from the land of another any produce thereof or cuts down, girdles or otherwise injures  
35 or carries off any tree, timber or shrub on the land of another person, or of the state, county, United  
36 States or any public corporation, or on the street or highway in front of any person’s house, or in  
37 any village, town or city lot, or cultivated grounds, or on the common or public grounds of any  
38 village, town or city, or on the street or highway in front thereof, in an action by such person, vil-  
39 lage, town, city, the United States, state, county, or public corporation, against the person commit-  
40 ting such trespasses if judgment is given for the plaintiff, it shall be given for treble the amount of  
41 damages claimed, or assessed for the trespass. In any such action, upon plaintiff’s proof of ownership  
42 of the premises and the commission by the defendant of any of the acts mentioned in this section,  
43 it is prima facie evidence that the acts were committed by the defendant willfully, intentionally and  
44 without plaintiff’s consent.

45 (2) A court may, in its discretion, award to a prevailing party under subsection (1) of this section

1 reimbursement of reasonable costs of litigation including but not limited to investigation costs and  
2 attorney fees.

3 (3) A court may, in its discretion, award to a prevailing plaintiff under subsection (1) of this  
4 section reasonable costs of reforestation activities related to the injury sustained by the plaintiff.

5 (4) A contract logger is liable only for actual damages in an action under this section if:

6 (a) The contract logger conducts an operation under a signed, written contract with a person  
7 the contract logger reasonably believes to be the legal owner of the produce, trees, timber or shrubs  
8 in the operation area;

9 (b) The contract identifies the operation area by a metes and bounds description or other suffi-  
10 cient legal description;

11 (c) Before the contract logger begins harvesting in the operation area, the person who engages  
12 the contract logger under the contract:

13 (A) Locates, marks and protects from damage all survey monuments in the operation area;

14 (B) Flags, stakes or otherwise clearly marks the boundaries of the operation area; and

15 (C) Provides the contract logger with a copy of the deed, contract or other instrument that the  
16 person who engages the contract logger under the contract relies upon as proof of ownership of the  
17 produce, trees, timber or shrubs in the operation area;

18 (d) The contract logger verifies the deed, contract or instrument described in paragraph (c)(C)  
19 of this subsection against the metes and bounds description or other sufficient legal description in  
20 the contract;

21 (e) The contract logger retains a copy of the deed, contract or instrument described in para-  
22 graph (c)(C) of this subsection for at least three years; and

23 (f) The contract logger does not receive written notice that any person has a claim of title to  
24 the land or timber in the operation area that is adverse to the person who engages the contract  
25 logger under the contract.

26 (5) Subsection (4) of this section does not affect an action for double or treble damages against  
27 a contract logger for damages outside the operation area as described in subsection (4) of this sec-  
28 tion.

29 (6) If an action is brought under this section against a contract logger, and the contract logger  
30 was engaged to harvest the timber by a person who purported to own the timber or to have au-  
31 thority to harvest the timber, the person who engaged the contract logger must be joined in the  
32 action as a defendant unless jurisdiction over the person cannot be had. If a judgment is entered  
33 against the contract logger and against the person who engaged the contract logger, the contract  
34 logger shall not be required to pay any part of the judgment unless the plaintiff establishes that the  
35 judgment cannot be enforced against the person who engaged the contract logger. The plaintiff may  
36 enforce the judgment against the contract logger only if:

37 (a) The plaintiff makes a good faith effort for at least six months after the judgment becomes  
38 final and subject to execution to enforce the judgment against the person who engaged the contract  
39 logger; and

40 (b) The court determines, upon motion of the plaintiff, that all or part of the judgment cannot  
41 be collected from the person who engaged the contract logger.

42 (7) Subsections (2) and (3) of this section apply in an action against a contract logger under  
43 subsection (4) of this section.

44 (8) For purposes of this section:

45 (a) "Contract logger" means a person engaged in a commercial timber harvesting operation.

(b) "Operation" has the meaning given in ORS 527.620 (12).

**SECTION 5.** ORS 197.277 is amended to read:

197.277. (1) The goals and rules established in ORS chapters 195, 196 and 197 do not apply to programs, rules, procedures, decisions, determinations or activities carried out under the Oregon Forest Practices Act administered under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

(2) No goal or rule shall be adopted, construed or administered in a manner to require or allow local governments to take any action prohibited by ORS 527.722.

(3) The Land Conservation and Development Commission shall amend goals and rules as necessary to implement ORS 197.180, 197.277, 197.825, 215.050, [477.090,] 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.687, 527.715, 527.990 and 527.992.

**SECTION 6.** ORS 477.095 is amended to read:

477.095. (1) An owner of forestland shall not be subject to the provisions of ORS 477.068 and [477.090] **section 2 of this 2013 Act**, where the origin or subsequent spread of a fire was the direct result of training activity by the Oregon National Guard or of any component of the Armed Forces of the United States.

(2) Notwithstanding any other law, the Oregon National Guard shall be subject to the duties, requirements or penalties of ORS 477.068[,] **and** 477.085 and [477.090] **section 2 of this 2013 Act**, where the origin or subsequent spread of a fire was the direct result of training activity by the Oregon National Guard.

**SECTION 7.** ORS 527.715 is amended to read:

527.715. The State Board of Forestry shall establish, by rule, the standards and procedures to implement the provisions of ORS 197.180, 197.270, 197.825, 215.050, [477.090,] 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and 527.992 **and sections 2 and 3 of this 2013 Act.**

**SECTION 8.** ORS 477.090 is repealed.

**SECTION 9.** Sections 2 and 3 of this 2013 Act, the amendments to ORS 105.810, 197.277, 477.095 and 527.715 by sections 4 to 7 of this 2013 Act and the repeal of ORS 477.090 by section 8 of this 2013 Act apply for fires that originate, or are initially discovered or detected, on or after the effective date of this 2013 Act. Notwithstanding the repeal of ORS 477.090 by section 8 of this 2013 Act, any action to recover costs and damages for fires described in ORS 477.090, as set forth in the 2011 Edition of Oregon Revised Statutes, that originated prior to the effective date of this 2013 Act may be brought or maintained under ORS 477.090, as set forth in the 2011 Edition of Oregon Revised Statutes.

**SECTION 10.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

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