

House Bill 2003

Sponsored by Representative STIEGLER

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**.

Extends landowner immunity for public's recreational use of land to gardening. Requires that landowner charge no more than \$25 per year for use of land for gardening.

Extends landowner immunity for public's use of land for recreational purposes, gardening, woodcutting and harvest of special forest products to paths, trails, roads, watercourses and other rights of way that are used by person to reach land for recreational purposes, gardening, woodcutting or harvest of special forest products. Requires that right of way must be on land that is adjacent to land that person intends to use for recreational purposes, gardening, woodcutting or harvest of special forest products.

A BILL FOR AN ACT

1
2 Relating to use of land; creating new provisions; and amending ORS 105.672, 105.676, 105.682,
3 105.688, 105.692 and 105.696.

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

5 **SECTION 1.** ORS 105.672 is amended to read:

6 105.672. As used in ORS 105.672 to 105.696:

7 (1) "Charge":

8 (a) Means the admission price or fee requested or expected by an owner in return for granting
9 permission for a person to enter or go upon the owner's land.

10 (b) Does not mean any amount received from a public body in return for granting permission for
11 the public to enter or go upon the owner's land.

12 (2) "Harvest" has that meaning given in ORS 164.813.

13 (3) "Land" includes all real property, whether publicly or privately owned.

14 (4) "Owner" means the possessor of any interest in any land, [*including but not limited to pos-*
15 *session of a fee title. "Owner" includes*] **such as the holder of a fee title, a tenant, a lessee, an**
16 **occupant, the holder of an easement, the holder of a right of way** or [*other*] **a person in pos-**
17 **session of the land.**

18 (5) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting,
19 fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities,
20 waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites
21 or volunteering for any public purpose project.

22 (6) "Special forest products" has that meaning given in ORS 164.813.

23 (7) "Woodcutting" means the cutting or removal of wood from land by an individual who has
24 obtained permission from the owner of the land to cut or remove wood.

25 **SECTION 2.** ORS 105.688 is amended to read:

26 105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided
27 by ORS 105.682 apply to:

28 (a) All [*public and private lands*] **land**, including but not limited to [*lands*] **land** adjacent or

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 contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

2 (b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on
 3 the *[lands]* **land** described in paragraph (a) of this subsection; *[and]*

4 (c) **All paths, trails, roads, watercourses and other rights of way while being used by a**
 5 **person to reach land for recreational purposes, gardening, woodcutting or the harvest of**
 6 **special forest products, that are on land adjacent to the land that the person intends to use**
 7 **for recreational purposes, gardening, woodcutting or the harvest of special forest products,**
 8 **and that have not been improved, designed or maintained for the specific purpose of provid-**
 9 **ing access for recreational purposes, gardening, woodcutting or the harvest of special forest**
 10 **products; and**

11 *[(c)]* (d) All machinery or equipment on the *[lands]* **land** described in paragraph (a) of this sub-
 12 section.

13 *[(2) The immunities provided by ORS 105.682 apply only if:]*

14 *[(a) The owner makes no charge for permission to use the land;]*

15 *[(b) The owner transfers an easement to a public body to use the land; or]*

16 *[(c) The owner charges no more than \$75 per cord for permission to use the land for*
 17 *woodcutting.]*

18 (2) **The immunities provided by ORS 105.682 for recreational purposes and for the harvest**
 19 **of special forest products apply only if:**

20 (a) **The owner transfers an easement to a public body to use the land; or**

21 (b) **The owner makes no charge for permission to use the land.**

22 (3) **The immunities provided by ORS 105.682 for gardening apply only if the owner charges**
 23 **no more than \$25 per year for the use of the land for gardening.**

24 (4) **The immunities provided by ORS 105.682 for woodcutting apply only if the owner**
 25 **charges no more than \$75 per cord for permission to use the land for woodcutting.**

26 **SECTION 3.** ORS 105.676 is amended to read:

27 105.676. The Legislative Assembly hereby declares it is the public policy of the State of Oregon
 28 to encourage owners of land to make their land available to the public for recreational purposes,
 29 **for gardening,** for woodcutting and for the harvest of special forest products by limiting their li-
 30 ability toward persons entering thereon for such purposes and by protecting their interests in their
 31 land from the extinguishment of any such interest or the acquisition by the public of any right to
 32 use or continue the use of such land for recreational purposes, **gardening,** woodcutting or the har-
 33 vest of special forest products.

34 **SECTION 4.** ORS 105.682 is amended to read:

35 105.682. (1) Except as provided by subsection (2) of this section, and subject to the provisions
 36 of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or
 37 property damage that arises out of the use of the land for recreational purposes, **gardening,**
 38 woodcutting or the harvest of special forest products when the owner of land either directly or in-
 39 directly permits any person to use the land for recreational purposes, **gardening,** woodcutting or
 40 the harvest of special forest products. The limitation on liability provided by this section applies if
 41 the principal purpose for entry upon the land is for recreational purposes, **gardening,** woodcutting
 42 or the harvest of special forest products, and is not affected if the injury, death or damage occurs
 43 while the person entering land is engaging in activities other than the use of the land for recre-
 44 ational purposes, **gardening,** woodcutting or the harvest of special forest products.

45 (2) This section does not limit the liability of an owner of land for intentional injury or damage

1 to a person coming onto land for recreational purposes, **gardening**, woodcutting or the harvest of
2 special forest products.

3 **SECTION 5.** ORS 105.692 is amended to read:

4 105.692. (1) An owner of land who either directly or indirectly permits any person to use the
5 land for recreational purposes, **gardening**, woodcutting or the harvest of special forest products
6 does not give that person or any other person a right to continued use of the land for those purposes
7 without the consent of the owner.

8 (2) The fact that an owner of land allows the public to use the land for recreational purposes,
9 **gardening**, woodcutting or the harvest of special forest products without posting, fencing or other-
10 wise restricting use of the land does not raise a presumption that the landowner intended to dedi-
11 cate or otherwise give over to the public the right to continued use of the land.

12 (3) Nothing in this section shall be construed to diminish or divert any public right to use land
13 for recreational purposes acquired by dedication, prescription, grant, custom or otherwise existing
14 before October 5, 1973.

15 (4) Nothing in this section shall be construed to diminish or divert any public right to use land
16 for woodcutting acquired by dedication, prescription, grant, custom or otherwise existing before
17 October 3, 1979.

18 **SECTION 6.** ORS 105.696 is amended to read:

19 105.696. ORS 105.672 to 105.696 do not:

20 (1) Create a duty of care or basis for liability for personal injury, death or property damage
21 resulting from the use of land for recreational purposes, **for gardening**, for woodcutting or for the
22 harvest of special forest products.

23 (2) Relieve a person using the land of another for recreational purposes, **gardening**, woodcutting
24 or the harvest of special forest products from any obligation that the person has to exercise care
25 in use of the land in the activities of the person or from the legal consequences of failure of the
26 person to exercise that care.

27 **SECTION 7. The amendments to ORS 105.676, 105.682, 105.688, 105.692 and 105.696 by**
28 **sections 2 to 6 of this 2009 Act apply only to causes of action that arise on or after the ef-**
29 **fective date of this 2009 Act.**

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