

House Bill 2865

Sponsored by Representative GARRETT; Representative GREENLICK, Senator BURDICK (Pre-session filed.)

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 immunity to owner of land for allowing public entry upon land for using public trails.
Clarifies language and conforms language to form and style requirements.

A BILL FOR AN ACT

1
2 Relating to landowner liability for public use of land; creating new provisions; and amending ORS
3 105.672, 105.676, 105.682, 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, as amended by section 1, chapter 52, Oregon Laws 2010, is amended
6 to read:

7 105.672. As used in ORS 105.672 to 105.696:

8 (1) "Charge":

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

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

13 (c) Does not include the fee for a winter recreation parking permit or any other parking fee of
14 \$15 or less per day.

15 (2) "Harvest" has *[that]* **the** meaning given **that term** in ORS 164.813.

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

17 (4) "Owner" means the possessor of any interest in any land, such as *[the]* a holder of a fee title,
18 a tenant, a lessee, an occupant, *[the]* a holder of an easement, *[the]* a holder of a right of way or a
19 person in possession of the land.

20 (5) **"Public trail" means a trail or path, including a worn trail or path over compacted**
21 **earth and a trail or path covered with wood chips, gravel, pavement or other similar mate-**
22 **rial, that is:**

23 (a) **Located on public property, private property or an unimproved public right of way**
24 **over private property; and**

25 (b) **Open to the public.**

26 *[(5)]* (6) *["Recreational purposes"]* **"Recreating"** includes, but is not limited to, outdoor activities
27 such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor ed-
28 ucational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic
29 or scientific sites or volunteering for any public purpose project.

30 *[(6)]* (7) "Special forest products" has *[that]* **the** meaning given **that term** in ORS 164.813.

31 *[(7)]* (8) "Woodcutting" means the cutting or removal of wood from land by an individual who

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 has obtained permission from the owner of the land to cut or remove wood.

2 **SECTION 2.** ORS 105.676 is amended to read:

3 105.676. The Legislative Assembly hereby declares it is the public policy of the State of Oregon
 4 to encourage owners of land to make their land available to the public for [*recreational purposes*]
 5 **recreating**, for gardening, for woodcutting, **for using public trails** and for [*the harvest of*] **har-**
 6 **vesting** special forest products by limiting [*their*] **the owners'** liability toward persons entering
 7 [*thereon for such*] **the land for those** purposes and by protecting [*their*] **the owners'** interests in
 8 their land from [*the extinguishment of any such interest or the*] **extinguishment or** acquisition by the
 9 public of any right to [*use or continue the use of such*] **enter or continue entering the** land for
 10 [*recreational purposes,*] **recreating, for** gardening, **for** woodcutting, **for using public trails** or [*the*
 11 *harvest of*] **for harvesting** special forest products.

12 **SECTION 3.** ORS 105.682 is amended to read:

13 105.682. (1) Except as provided by subsection (2) of this section[,] and subject to the provisions
 14 of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or
 15 property damage that arises out of [*the use of*] **entry on** the land for [*recreational purposes,*] **recre-**
 16 **ating, for** gardening, **for** woodcutting, **for using public trails** or [*the harvest of*] **for harvesting**
 17 special forest products when the owner of land either directly or indirectly permits any person to
 18 [*use*] **enter** the land for [*recreational purposes,*] **recreating, for** gardening, **for** woodcutting, **for**
 19 **using public trails** or [*the harvest of*] **for harvesting** special forest products. The limitation on li-
 20 ability provided by this section applies [*if*] **when** the principal purpose for entry upon the land is for
 21 [*recreational purposes,*] **recreating, for** gardening, **for** woodcutting, **for using public trails** or [*the*
 22 *harvest of*] **for harvesting** special forest products, and **the limitation** is not affected [*if*] **because**
 23 the injury, death or damage occurs while the person entering land is engaging in activities other
 24 than [*the use of the land for recreational purposes*] **recreating, gardening, woodcutting, using public**
 25 **trails** or [*the harvest of*] **harvesting** special forest products.

26 (2) This section does not limit the liability of an owner of land for intentional injury or damage
 27 to a person [*coming onto*] **entering** land for [*recreational purposes,*] **recreating, for** gardening, **for**
 28 woodcutting, **for using public trails** or [*the harvest of*] **for harvesting** special forest products.

29 **SECTION 4.** ORS 105.688, as amended by section 2, chapter 52, Oregon Laws 2010, is amended
 30 to read:

31 105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided
 32 by ORS 105.682 apply to:

33 (a) All land, including but not limited to land adjacent or contiguous to any bodies of water,
 34 watercourses or the ocean shore as defined by ORS 390.605;

35 (b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on
 36 the land described in paragraph (a) of this subsection;

37 (c) All paths, trails, roads, watercourses and other rights of way [*while being used by a person*
 38 *to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest pro-*
 39 *ducts,*] that are on land adjacent to the land that the person intends to [*use for recreational*
 40 *purposes,*] **enter for recreating, for** gardening, **for** woodcutting, **for using public trails** or [*the*
 41 *harvest of*] **for harvesting** special forest products, and that have not been improved, designed or
 42 maintained for the specific purpose of providing access for [*recreational purposes,*] **recreating, for**
 43 gardening, **for** woodcutting, **for using public trails** or [*the harvest of*] **for harvesting** special forest
 44 products; and

45 (d) All machinery or equipment on the land described in paragraph (a) of this subsection.

1 (2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement
2 to a public body to use the land.

3 (3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS
4 105.682 do not apply if the owner makes any charge for permission to use the land for [*recreational*
5 *purposes,*] **recreating, for** gardening, **for** woodcutting, **for using public trails** or [*the harvest of*]
6 **for harvesting** special forest products.

7 (4) If the owner charges for permission to use the owner's land for one or more specific recre-
8 ational purposes and the owner provides notice in the manner provided by subsection (8) of this
9 section, the immunities provided by ORS 105.682 apply to any use of the land other than the activ-
10 ities for which the charge is imposed. If the owner charges for permission to use a specified part
11 of the owner's land for recreational purposes and the owner provides notice in the manner provided
12 by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of
13 the owner's land.

14 (5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges
15 more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25
16 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any
17 use of the land other than gardening. If the owner charges more than \$25 per year for permission
18 to use a specific part of the owner's land for gardening and the owner provides notice in the manner
19 provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the re-
20 mainder of the owner's land.

21 (6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges
22 more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more
23 than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682
24 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord
25 for permission to use a specific part of the owner's land for woodcutting and the owner provides
26 notice in the manner provided by subsection (8) of this section, the immunities provided by ORS
27 105.682 apply to the remainder of the owner's land.

28 (7) The immunities provided by ORS 105.682 for [*the harvest of*] **harvesting** special forest pro-
29 ducts do not apply if the owner makes any charge for permission to use the land for [*the harvest*
30 *of*] **harvesting** special forest products. If the owner charges for permission to use the owner's land
31 for [*the harvest of*] **harvesting** special forest products, the immunities provided by ORS 105.682 apply
32 to any use of the land other than [*the harvest of*] **harvesting** special forest products. If the owner
33 charges for permission to use a specific part of the owner's land for harvesting special forest pro-
34 ducts and the owner provides notice in the manner provided by subsection (8) of this section, the
35 immunities provided by ORS 105.682 apply to the remainder of the owner's land.

36 (8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a re-
37 ceipt, or by [*such*] other means [*as may be*] reasonably calculated to apprise a person of:

38 (a) The limited uses of the land for which the charge is made, and the immunities provided under
39 ORS 105.682 for other uses of the land; or

40 (b) The portion of the land the use of which is subject to the charge[,] and the immunities pro-
41 vided under ORS 105.682 for the remainder of the land.

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

43 105.692. (1) An owner of land who either directly or indirectly permits any person to use the
44 land for [*recreational purposes,*] **recreating, for** gardening, **for** woodcutting, **for using public trails**
45 or [*the harvest of*] **for harvesting** special forest products does not give that person or any other

1 person a right to continued use of the land for those purposes without the consent of the owner.

2 (2) The fact that an owner of land allows the public to use the land for [*recreational purposes,*]
3 **recreating, for** gardening, **for** woodcutting, **for using public trails** or [*the harvest of*] **for har-**
4 **vesting** special forest products without posting, fencing or otherwise restricting use of the land does
5 not raise a presumption that the [*landowner*] **owner of land** intended to dedicate or otherwise give
6 over to the public the right to continued use of the land.

7 (3) [*Nothing in this section shall be construed to*] **This section does not** diminish or divert any
8 public right to use land for recreational purposes **that was** acquired by dedication, prescription,
9 grant, custom or otherwise existing before October 5, 1973.

10 (4) [*Nothing in this section shall be construed to*] **This section does not** diminish or divert any
11 public right to use land for woodcutting **that was** acquired by dedication, prescription, grant, cus-
12 tom or otherwise existing before October 3, 1979.

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

14 105.696. ORS 105.672 to 105.696 do not:

15 (1) Create a duty of care or basis for liability for personal injury, death or property damage
16 resulting from the use of land for [*recreational purposes,*] **recreating,** for gardening, for
17 woodcutting, **for using public trails** or for [*the harvest of*] **harvesting** special forest products.

18 (2) Relieve a person [*using*] **entering** the land of another for [*recreational purposes,*] **recreating,**
19 **for** gardening, **for** woodcutting, **for using public trails** or [*the harvest of*] **for harvesting** special
20 forest products from any obligation that the person has to exercise care in use of the land in the
21 activities of the person or from the legal consequences of failure of the person to exercise that care.

22 **SECTION 7. The amendments to ORS 105.672, 105.676, 105.682, 105.688, 105.692 and 105.696**
23 **by sections 1 to 6 of this 2011 Act apply to causes of action that arise on or after the effective**
24 **date of this 2011 Act.**

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