



## **HB 3201 SECTION-BY-SECTION SUMMARY (-3 Amendments, Replaces Bill)**

**SECTION 2. Subsection (1):** This subsection includes the relevant definitions. While most of these definitions are discussed substantively where they appear below, it is worth noting here that there are two primary components to damages: property damages and economic damages. Property damages are calculated as the lesser of (i) the reduction in fair market value as determined by a state certified appraiser, or (ii) the cost to restore the property to its original condition. Economic damages would include other monetary losses, such as contract damages resultant from the fire.

**Subsection (2):** Building on language in ORS 477.090, this subsection provides that double damages are available if the fire started as a result of gross negligence, willfulness, maliciousness, or recklessness. In all other circumstances, only single damages are available.

**Subsection (3):** Preserving language in ORS 477.090, this subsection provides that persons liable for wildfire damages are also liable for fire suppression costs.

**Subsection (4):** This subsection provides that the damages available under Subsection (1) are the exclusive remedy for damage *to property* due to a forest fire. Note that this would not preclude bodily injury claims. The draft language is explicit that it does not (i) prohibit cross-claims, counterclaims, or joinder of third parties, or (ii) affect application of contributory or comparative negligence as spelled out in ORS 31.600.

**Subsection (5):** This subsection states explicitly that the bill does not create a new cause of action or alter any existing cause of action.

**SECTION 3. Subsection (1):** This subsection provides that the doctrine of *res ipsa loquitur* does not apply in the context of wildfires. *Res ipsa loquitur* is latin for “the thing speaks for itself,” and is an evidentiary standard that, in certain circumstances, allows a plaintiff to maintain a negligence claim without proving that the defendant breached a duty of care to the plaintiff. *Res ipsa* is applicable only to those types of injuries that do not occur unless someone is negligent (e.g., an anvil falling out of a window). We do not believe there is any circumstance under which this should apply to forest fires.

**Subsection (2):** This subsection provides that a person is not liable for forest fires occurring by act of God (e.g., a lightning strike) unless such person causes or contributes to the spread of the fire.

**SECTION 9:** This subsection provides that the bill is prospective only.