Enrolled
Senate Bill 709

Sponsored by Senators JOHNSON, BAERTSCHIGER JR, ROBLAN, EDWARDS, Representative MCLANE; Senators BATES, BEYER, BOQUIST, CLOSE, DEVLIN, FERRIOLI, GEORGE, GIROD, HANSELL, KRUSE, MONNES ANDERSON, PROZANSKI, STARR, WINTERS, Representatives BARKER, CAMERON, CLEM, DAVIS, ESQUIVEL, FREEMAN, HANNA, HICKS, HUFFMAN, JOHNSON, KRIEGER, MCKEOWN, OLSON, PARRISH, RICHARDSON, SPRENGER, WITT

CHAPTER .....

AN ACT

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

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

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

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

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

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

(B) Any other objectively verifiable monetary losses.

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

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

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

(e) "Wildfire" means a fire that:

(A) Results from a violation of this chapter or of rules adopted under ORS 526.016 or 526.041; or

(B) Originated on land used or capable of being used for growing forest tree species regardless of the existing use of the land.

(2) Except as provided in ORS 477.095 and section 3 of this 2013 Act, in a civil action for property damage caused by a wildfire, the recoverable damages are:

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

(b) Twice the amount of economic and property damages, if the wildfire occurred as the result of recklessness, gross negligence, willfulness or malice.

(3) Except as provided in ORS 477.095 and subject to any other provision of this chapter limiting the recovery of fire fighting costs, a person who causes a wildfire is liable to any person or entity for the full amount of all expenses incurred by the person or entity in fighting the wildfire.

(4) The remedies provided under this section are in addition to any available criminal or civil penalties that may be assessed for the violation of a statute or rule but, subject to Article I, section 10, of the Oregon Constitution, are the exclusive remedies for damages or injury to property caused by a wildfire. This subsection does not:

(a) Prohibit the bringing of any cross claim, counterclaim or joinder of parties;

(b) Prohibit the institution of a suit under ORS 496.705 for the recovery of damages for the unlawful taking of wildlife; or

(c) Affect the applicability of ORS 31.600 to an action.

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

SECTION 3. (1) As used in this section, "wildfire" has the meaning given that term in section 2 of this 2013 Act.

(2) A person is not liable in a civil action for injury to or destruction of property arising out of a wildfire, except to the extent evidence demonstrates that:

(a) An action or inaction of the person constituted negligence or a higher degree of fault; and

(b) The action or inaction caused or contributed to the cause of the wildfire or caused or contributed to the spreading of the wildfire.

SECTION 4. ORS 105.810 is amended to read:

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

(2) A court may, in its discretion, award to a prevailing party under subsection (1) of this section reimbursement of reasonable costs of litigation including but not limited to investigation costs and attorney fees.

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

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

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

(b) The contract identifies the operation area by a metes and bounds description or other sufficient legal description;

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

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

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

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

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

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

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

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

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

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

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

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

(8) For purposes of this section:

(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.

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 and 477.095 by sections 4 to 6 of this 2013 Act and the repeal of ORS 477.090 by section 8 of this 2013 Act apply for wildfires 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.

Passed by Senate April 17, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 22, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State