

**PROPOSED AMENDMENTS TO
SENATE BILL 709**

1 On page 1 of the printed bill, delete lines 5 through 26 and delete pages
2 2 through 4 and insert:

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

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

6 **“(a) ‘Economic and property damage’ means the sum of:**

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

11 **“(B) Any other objectively verifiable monetary losses.**

12 **“(b) ‘Escaped fire’ means a fire that originated on land used or ca-**
13 **pable of being used for growing forest tree species regardless of the**
14 **existing use of the land.**

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

20 **“(d) ‘Forest tree species’ means a tree species that is capable of**
21 **producing logs, fiber or other wood materials that are suitable for the**
22 **production of lumber, sheeting, pulp, firewood or other commercial**

1 forest products.

2 “(e) ‘State certified appraiser’ means an individual who has been
3 certified as a state certified appraiser under ORS 674.310 and is quali-
4 fied to appraise the property that is the subject of a fair market value
5 determination.

6 “(2) Except as provided in ORS 477.095 and section 3 of this 2013 Act,
7 if property belonging to the United States or a state agency, local
8 government or private landowner is damaged or injured due to a fire
9 that results from a violation of this chapter or of rules adopted under
10 ORS 526.016 or 526.041 or due to an escaped fire, a person who holds
11 an interest in the property may recover in a civil action:

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

15 “(b) Twice the amount of economic and property damages, if the
16 fire occurred as the result of recklessness, gross negligence,
17 willfulness or malice.

18 “(3) Except as provided in ORS 477.095 and subject to any other
19 provision of this chapter limiting the recovery of fire fighting costs,
20 a person who causes a fire through a violation of this chapter or of
21 rules adopted under ORS 526.016 or 526.041 or causes an escaped fire is
22 liable to any person or entity for the full amount of all expenses in-
23 curred by the person or entity in fighting the fire.

24 “(4) The remedies provided under this section are in addition to any
25 available criminal or civil penalties that may be assessed for the vio-
26 lation of a statute or rule but, subject to Article I, section 10, of the
27 Oregon Constitution, are the exclusive remedies for damages or injury
28 to property due to a fire that results from a violation of this chapter
29 or of rules adopted under ORS 526.016 or 526.041 or due to an escaped
30 fire. This subsection does not prohibit the bringing of any cross claim,

1 **counterclaim or joinder of parties. This subsection does not affect the**
2 **applicability of ORS 31.600 to an action.**

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

5 **“SECTION 3. (1) As used in this section, ‘escaped fire’ has the**
6 **meaning given that term in section 2 of this 2013 Act.**

7 **“(2) The doctrine of res ipsa loquitur may not be used to infer**
8 **negligence for the purpose of establishing liability due to a fire that**
9 **results from a violation of this chapter or of rules adopted under ORS**
10 **526.016 or 526.041 or due to an escaped fire.**

11 **“(3) If a fire occurs through an act of God, except to the extent that**
12 **the person causes or contributes to the spreading of the fire, a person**
13 **is not liable in a civil action for injury to or destruction of property**
14 **by an escaped fire.**

15 **“SECTION 4. ORS 105.810 is amended to read:**

16 **“105.810. (1) Except as provided in [*ORS 477.090*] sections 2 and 3 of this**
17 **2013 Act and subsections (4) to (7) of this section, whenever any person,**
18 **without lawful authority, willfully injures or severs from the land of another**
19 **any produce thereof or cuts down, girdles or otherwise injures or carries off**
20 **any tree, timber or shrub on the land of another person, or of the state,**
21 **county, United States or any public corporation, or on the street or highway**
22 **in front of any person’s house, or in any village, town or city lot, or culti-**
23 **vated grounds, or on the common or public grounds of any village, town or**
24 **city, or on the street or highway in front thereof, in an action by such per-**
25 **son, village, town, city, the United States, state, county, or public corpo-**
26 **ration, against the person committing such trespasses if judgment is given**
27 **for the plaintiff, it shall be given for treble the amount of damages claimed,**
28 **or assessed for the trespass. In any such action, upon plaintiff’s proof of**
29 **ownership of the premises and the commission by the defendant of any of the**
30 **acts mentioned in this section, it is prima facie evidence that the acts were**

1 committed by the defendant willfully, intentionally and without plaintiff's
2 consent.

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

6 “(3) A court may, in its discretion, award to a prevailing plaintiff under
7 subsection (1) of this section reasonable costs of reforestation activities re-
8 lated to the injury sustained by the plaintiff.

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

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

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

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

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

20 “(B) Flags, stakes or otherwise clearly marks the boundaries of the oper-
21 ation area; and

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

26 “(d) The contract logger verifies the deed, contract or instrument de-
27 scribed in paragraph (c)(C) of this subsection against the metes and bounds
28 description or other sufficient legal description in the contract;

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

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

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

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

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

20 “(b) The court determines, upon motion of the plaintiff, that all or part
21 of the judgment cannot be collected from the person who engaged the con-
22 tract logger.

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

25 “(8) For purposes of this section:

26 “(a) ‘Contract logger’ means a person engaged in a commercial timber
27 harvesting operation.

28 “(b) ‘Operation’ has the meaning given in ORS 527.620 (12).

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

30 “197.277. (1) The goals and rules established in ORS chapters 195, 196 and

1 197 do not apply to programs, rules, procedures, decisions, determinations
2 or activities carried out under the Oregon Forest Practices Act administered
3 under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

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

7 “(3) The Land Conservation and Development Commission shall amend
8 goals and rules as necessary to implement ORS 197.180, 197.277, 197.825,
9 215.050, [477.090,] 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620,
10 527.630, 527.660, 527.670, 527.683 to 527.687, 527.715, 527.990 and 527.992.

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

12 “477.095. (1) An owner of forestland shall not be subject to the provisions
13 of ORS 477.068 and [477.090] **section 2 of this 2013 Act**, where the origin
14 or subsequent spread of a fire was the direct result of training activity by
15 the Oregon National Guard or of any component of the Armed Forces of the
16 United States.

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

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

23 “527.715. The State Board of Forestry shall establish, by rule, the stan-
24 dards and procedures to implement the provisions of ORS 197.180, 197.270,
25 197.825, 215.050, [477.090,] 477.440, 477.455, 477.460, 526.009, 526.016, 526.156,
26 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and
27 527.992.

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

29 **“SECTION 9.** Sections 2 and 3 of this 2013 Act, the amendments to
30 ORS 105.810, 197.277 and 477.095 by sections 4 to 6 of this 2013 Act and

1 the repeal of ORS 477.090 by section 8 of this 2013 Act apply for fires
2 that originate, or are initially discovered or detected, on or after the
3 effective date of this 2013 Act. Notwithstanding the repeal of ORS
4 477.090 by section 8 of this 2013 Act, any action to recover costs and
5 damages for fires described in ORS 477.090, as set forth in the 2011
6 Edition of Oregon Revised Statutes, that originated prior to the effec-
7 tive date of this 2013 Act may be brought or maintained under ORS
8 477.090, as set forth in the 2011 Edition of Oregon Revised Statutes.

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

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