

**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 wildfire or the cost**  
9 **of restoring property to the condition the property was in immediately**  
10 **before a wildfire; and**

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

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

17 **“(c) ‘Forest tree species’ means a tree species that is capable of**  
18 **producing logs, fiber or other wood materials that are suitable for the**  
19 **production of lumber, sheeting, pulp, firewood or other commercial**  
20 **forest products.**

21 **“(d) ‘State certified appraiser’ means an individual who has been**  
22 **certified as a state certified appraiser under ORS 674.310 and is quali-**

1 **fied to appraise the property that is the subject of a fair market value**  
2 **determination.**

3 **“(e) ‘Wildfire’ means a fire that:**

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

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

8 **“(2) Except as provided in ORS 477.095 and section 3 of this 2013 Act,**  
9 **in a civil action for property damage caused by a wildfire, the recov-**  
10 **erable damages are:**

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

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

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

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

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

29 **“(b) Prohibit the institution of a suit under ORS 496.705 for the re-**  
30 **covery of damages for the unlawful taking of wildlife; or**

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

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

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

6       “(2) **A person is not liable in a civil action for injury to or de-**  
7 **struction of property arising out of a wildfire, except to the extent**  
8 **evidence demonstrates that:**

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

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

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

14       “105.810. (1) Except as provided in [*ORS 477.090*] **sections 2 and 3 of this**  
15 **2013 Act** and subsections (4) to (7) of this section, whenever any person,  
16 without lawful authority, willfully injures or severs from the land of another  
17 any produce thereof or cuts down, girdles or otherwise injures or carries off  
18 any tree, timber or shrub on the land of another person, or of the state,  
19 county, United States or any public corporation, or on the street or highway  
20 in front of any person’s house, or in any village, town or city lot, or culti-  
21 vated grounds, or on the common or public grounds of any village, town or  
22 city, or on the street or highway in front thereof, in an action by such per-  
23 son, village, town, city, the United States, state, county, or public corpo-  
24 ration, against the person committing such trespasses if judgment is given  
25 for the plaintiff, it shall be given for treble the amount of damages claimed,  
26 or assessed for the trespass. In any such action, upon plaintiff’s proof of  
27 ownership of the premises and the commission by the defendant of any of the  
28 acts mentioned in this section, it is prima facie evidence that the acts were  
29 committed by the defendant willfully, intentionally and without plaintiff’s  
30 consent.

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

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

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

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

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

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

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

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

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

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

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

29 “(f) The contract logger does not receive written notice that any person  
30 has a claim of title to the land or timber in the operation area that is ad-

1 verse to the person who engages the contract logger under the contract.

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

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

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

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

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

23 “(8) For purposes of this section:

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

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

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

28 “197.277. (1) The goals and rules established in ORS chapters 195, 196 and  
29 197 do not apply to programs, rules, procedures, decisions, determinations  
30 or activities carried out under the Oregon Forest Practices Act administered

1 under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

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

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

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

10 “477.095. (1) An owner of forestland shall not be subject to the provisions  
11 of ORS 477.068 and [477.090] **section 2 of this 2013 Act**, where the origin  
12 or subsequent spread of a fire was the direct result of training activity by  
13 the Oregon National Guard or of any component of the Armed Forces of the  
14 United States.

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

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

21 “527.715. The State Board of Forestry shall establish, by rule, the stan-  
22 dards and procedures to implement the provisions of ORS 197.180, 197.270,  
23 197.825, 215.050, [477.090,] 477.440, 477.455, 477.460, 526.009, 526.016, 526.156,  
24 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and  
25 527.992.

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

27 **“SECTION 9.** Sections 2 and 3 of this 2013 Act, the amendments to  
28 ORS 105.810, 197.277 and 477.095 by sections 4 to 6 of this 2013 Act and  
29 the repeal of ORS 477.090 by section 8 of this 2013 Act apply for  
30 wildfires that originate, or are initially discovered or detected, on or

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

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

10

---