

D R A F T

SUMMARY

Eliminates limitation of liability for owner of land used for trail or recreational purposes when owner is public body.

A BILL FOR AN ACT

Relating to immunity of public bodies; creating new provisions; amending ORS 105.668, 105.672, 105.682 and 105.688; and repealing ORS 105.699.

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

SECTION 1. ORS 105.668 is amended to read:

105.668. (1) As used in this section:

(a) “Structures” means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.

(b) “Unimproved right of way” means a platted or dedicated public right of way over which a street, road or highway has not been constructed to the standards and specifications of the city with jurisdiction over the public right of way and for which the city has not expressly accepted responsibility for maintenance.

(2) **Except as provided in subsection (4) of this section,** a personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

[(a) A city with a population of 500,000 or more;]

1 **[(b) The officers, employees or agents of a city with a population of 500,000**
2 **or more to the extent the officers, employees or agents are entitled to defense**
3 **and indemnification under ORS 30.285;]**

4 **[(c)] (a)** The owner of land abutting the public easement, or unimproved
5 right of way, in a city with a population of 500,000 or more; or

6 **[(d)] (b)** A nonprofit corporation and its volunteers for the construction
7 and maintenance of the trail or the structures in a public easement or un-
8 improved right of way in a city with a population of 500,000 or more.

9 (3) Notwithstanding the limit in subsection (2) of this section to a city
10 with a population of 500,000 or more, by adoption of an ordinance or resol-
11 ution, a city or county to which subsection (2) of this section does not apply
12 may opt to limit liability in the manner established by subsection (2) of this
13 section for:

14 **[(a) The city or county that opts in by ordinance or resolution;]**

15 **[(b) The officers, employees or agents of the city or county that opts in to**
16 **the extent the officers, employees or agents are entitled to defense and**
17 **indemnification under ORS 30.285;]**

18 **[(c)] (a)** The owner of land abutting the public easement, or unimproved
19 right of way, in the city or county that opts in by ordinance or resolution;
20 and

21 **[(d)] (b)** A nonprofit corporation and its volunteers for the construction
22 and maintenance of the trail or the structures in a public easement or un-
23 improved right of way in the city or county that opts in.

24 (4) The immunity granted by this section from a private claim or right
25 of action based on negligence does not grant immunity from liability:

26 (a) **[Except as provided in subsection (2)(b) or (3)(b) of this section,]** To a
27 person that receives compensation for providing assistance, services or ad-
28 vice in relation to conduct that leads to a personal injury or property dam-
29 age.

30 (b) For personal injury or property damage resulting from gross
31 negligence or from reckless, wanton or intentional misconduct.

1 (c) For an activity for which a person is strictly liable without regard to
2 fault.

3 **(d) To a public body as defined in ORS 174.109.**

4 **SECTION 2.** ORS 105.672 is amended to read:

5 105.672. As used in ORS 105.672 to 105.696:

6 (1) “Charge”:

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

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

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

14 (2) “Harvest” has that meaning given in ORS 164.813.

15 (3) “Land” includes all real property, whether publicly or privately owned.

16 (4) “Owner” means the possessor of any interest in any land, such as the
17 holder of a fee title, a tenant, a lessee, an occupant, the holder of an ease-
18 ment, the holder of a right of way or a person in possession of the land.

19 (5) “Recreational purposes” includes, but is not limited to, outdoor activ-
20 ities such as hunting, fishing, swimming, boating, camping, picnicking, hik-
21 ing, nature study, outdoor educational activities, waterskiing, winter sports,
22 viewing or enjoying historical, archaeological, scenic or scientific sites or
23 volunteering for any public purpose project.

24 (6) “Special forest products” has that meaning given in ORS 164.813.

25 (7) “Woodcutting” means the cutting or removal of wood from land by an
26 individual who has obtained permission from the owner of the land to cut
27 or remove wood.

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

29 105.682. (1) Except as provided by [*subsection (2)*] **subsections (2) and (3)**
30 of this section, and subject to the provisions of ORS 105.688, an owner of
31 land is not liable in contract or tort for any personal injury, death or prop-

1 erty damage that arises out of the use of the land for recreational purposes,
2 gardening, woodcutting or the harvest of special forest products when the
3 owner of land either directly or indirectly permits any person to use the land
4 for recreational purposes, gardening, woodcutting or the harvest of special
5 forest products. The limitation on liability provided by this section applies
6 if the principal purpose for entry upon the land is for recreational purposes,
7 gardening, woodcutting or the harvest of special forest products, and is not
8 affected if the injury, death or damage occurs while the person entering land
9 is engaging in activities other than the use of the land for recreational
10 purposes, gardening, woodcutting or the harvest of special forest products.

11 (2) This section does not limit the liability of an owner of land for in-
12 tentional injury or damage to a person coming onto land for recreational
13 purposes, gardening, woodcutting or the harvest of special forest products.

14 **(3) This section does not limit the liability of an owner of land that**
15 **is a public body as defined in ORS 174.109.**

16 **SECTION 4.** ORS 105.688 is amended to read:

17 105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the
18 immunities provided by ORS 105.682 apply to:

19 (a) All land, including but not limited to land adjacent or contiguous to
20 any bodies of water, watercourses or the ocean shore as defined by ORS
21 390.605;

22 (b) All roads, bodies of water, watercourses, rights of way, buildings, fix-
23 tures and structures on the land described in paragraph (a) of this sub-
24 section;

25 (c) All paths, trails, roads, watercourses and other rights of way while
26 being used by a person to reach land for recreational purposes, gardening,
27 woodcutting or the harvest of special forest products, that are on land ad-
28 jacent to the land that the person intends to use for recreational purposes,
29 gardening, woodcutting or the harvest of special forest products, and that
30 have not been improved, designed or maintained for the specific purpose of
31 providing access for recreational purposes, gardening, woodcutting or the

1 harvest of special forest products; and

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

4 (2) The immunities provided by ORS 105.682 apply to **an owner of land**
5 **that is not a public body** if the owner transfers an easement to a public
6 body to use the land.

7 (3) Except as provided in subsections (4) to (7) of this section, the immu-
8 nities provided by ORS 105.682 do not apply if the owner makes any charge
9 for permission to use the land for recreational purposes, gardening,
10 woodcutting or the harvest of special forest products.

11 (4) If the owner charges for permission to use the owner's land for one
12 or more specific recreational purposes and the owner provides notice in the
13 manner provided by subsection (8) of this section, the immunities provided
14 by ORS 105.682 apply to any use of the land other than the activities for
15 which the charge is imposed. If the owner charges for permission to use a
16 specified part of the owner's land for recreational purposes and the owner
17 provides notice in the manner provided by subsection (8) of this section, the
18 immunities provided by ORS 105.682 apply to the remainder of the owner's
19 land.

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

29 (6) The immunities provided by ORS 105.682 for woodcutting do not apply
30 if the owner charges more than \$75 per cord for permission to use the land
31 for woodcutting. If the owner charges more than \$75 per cord for the use of

1 the land for woodcutting, the immunities provided by ORS 105.682 apply to
2 any use of the land other than woodcutting. If the owner charges more than
3 \$75 per cord for permission to use a specific part of the owner's land for
4 woodcutting and the owner provides notice in the manner provided by sub-
5 section (8) of this section, the immunities provided by ORS 105.682 apply to
6 the remainder of the owner's land.

7 (7) The immunities provided by ORS 105.682 for the harvest of special
8 forest products do not apply if the owner makes any charge for permission
9 to use the land for the harvest of special forest products. If the owner
10 charges for permission to use the owner's land for the harvest of special
11 forest products, the immunities provided by ORS 105.682 apply to any use of
12 the land other than the harvest of special forest products. If the owner
13 charges for permission to use a specific part of the owner's land for har-
14 vesting special forest products and the owner provides notice in the manner
15 provided by subsection (8) of this section, the immunities provided by ORS
16 105.682 apply to the remainder of the owner's land.

17 (8) Notices under subsections (4) to (7) of this section may be given by
18 posting, as part of a receipt, or by such other means as may be reasonably
19 calculated to apprise a person of:

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

22 (b) The portion of the land the use of which is subject to the charge, and
23 the immunities provided under ORS 105.682 for the remainder of the land.

24 **SECTION 5. ORS 105.699 is repealed.**

25 **SECTION 6. (1) The amendments to ORS 105.668 by section 1 of this**
26 **2017 Act apply to ordinances and resolutions adopted before, on or af-**
27 **ter the effective date of this 2017 Act. Any ordinance or resolution**
28 **adopted by a city or county under ORS 105.668 (3) before the effective**
29 **date of this 2017 Act does not limit the liability of the city or county,**
30 **or its officers, employees or agents, on or after the effective date of**
31 **this 2017 Act.**

1 **(2) The amendments to ORS 105.668, 105.672, 105.682 and 105.688 by**
2 **sections 1 to 4 of this 2017 Act and the repeal of ORS 105.699 by section**
3 **5 of this 2017 Act apply only to causes of action arising on and after**
4 **the effective date of this 2017 Act.**

5
