

RESTORE RECREATIONAL IMMUNITY

REQUEST

Restore recreational immunity to landowners so they continue to allow Oregonians to access their land for recreational use and enjoyment.

BACKGROUND

The Oregon Public Use of Lands Actⁱ encourages *public and private* owners of land to make their land available to the public for recreational purposes by providing landowners immunity from tort liability. However, a recent Oregon Supreme Court decision undermined the immunity guaranteed in the Act, which could result in a severe reduction of land available to Oregonians for their recreational use and enjoyment.

What is Recreational Immunity?

Landowners, *both public and private*, who make their land available without charge for recreational use by the public are not liable if a person is injured while using the land for recreational purposes.

The Public Use of Lands Act has increased the availability of land for free recreation by limiting liability to cities, counties, parks, schools and a wide range of private owners, including farmers and timber companies that allow hunters, anglers, hikers, mountain bikers and other members of the public to use or traverse their lands at no charge.

Recreational immunity is the cornerstone principle that secures the public policy goals of the Oregon Public Use of Lands Act.



SUPPORTERS

Oregon Recreation and Park Association
Special Districts Association of Oregon
Metro
Oregon Farm Bureau
Oregonians in Action
Oregon Forest Industries Council
Coalition of Oregon Land Trusts
Lane County

League of Oregon Cities
City of Gresham
City of Hillsboro
City of Medford
City of Portland
Association of Oregon Counties
Oregon School Boards Association

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OREGON SUPREME COURT CASES

Johnson v. Gibsonⁱⁱ

In *Johnson v. Gibson*, the Court held that when the Legislature passed the Public Lands Act, it intended only to immunize the actual landowner, and never intended recreational immunity to protect employees or agents acting on behalf of the landowners.

This ruling effectively undermines a landowner's recreational immunity from tort liability under the Act. Public employers are statutorily required to indemnify their employeesⁱⁱⁱ and most, if not all, landowners will ultimately be responsible for the negligence of their employees that results in injury to a member of the public.

Landowners must now weigh whether allowing the public to recreate on their land and in their facilities is worth the increased risk of liability.

Horton v. OHSU^{iv}

In *Horton*, the Court confirmed the need for statutory liability limitations to satisfy the Oregon Constitution's remedy clause and reinstated a flexible analysis for deciding remedy clause^v cases, which requires the Legislature to clearly demonstrate its reasons for adjusting duties and remedies that one person owes another. Expressly stating the duties owed to members of the public who use public or private land for recreational purposes and why those duties were altered would satisfy the remedies clause and ensure recreational immunity is not illusory for landowners.

PROPOSED AMENDMENTS

Following *Johnson*, we seek to amend ORS 105.672 to restore recreational immunity to a landowner's officers, employees, agents or volunteers who are acting within the scope of their employment or duties.

Following *Horton*, we seek to amend ORS 105.682 to satisfy the remedy clause to expressly state a landowner's duty of care toward members of the public who use the land for recreation without charge.

ⁱ ORS 105.668 - 700

ⁱⁱ *Johnson v. Gibson*, 358 Or 624 (2016)

ⁱⁱⁱ ORS 30.285 & 30.287

^{iv} *Horton v. OHSU*, 359 Or 168 (217-221) (2016)

^v Article I, section 10, of the Oregon Constitution provides that "every man shall have remedy by due course of law for injury done him in his person, property, or reputation."