



**The Oregon Public Use of Lands Act passed in 1995** with a goal of encouraging public and private owners of land to make their land available to the public for recreational purposes. It was understood that landowners, both public and private, who made their land available without charge for recreational use by the public were not liable if a person was injured while using the land for recreational purposes.

The Act 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.

However, a recent court decision has led to closure of some Oregon parks and recreation properties, insurers urging closures due to liability, and all Oregonians at risk of losing access to trails statewide. In order to make sure citizens can enjoy trails and parks this year, we need an immediate solution to this problem. We must adjust Oregon's long standing recreational immunity statute to assure the legislature's policy goal in ORS 105.676 is realized.

**ORS 105.676: The Legislative Assembly hereby declares** it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes, for gardening, for woodcutting and for the harvest of special forest products by limiting their liability toward persons entering thereon for such purposes and by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

#### **The Court decision:**

- Plaintiff sustained injuries when she slipped and fell on land owned by the City of Newport.
- Specifically, she fell on a wooden bridge that is a part of the city's "Ocean to Bay Trail" while walking her dog to the beach to engage in recreation there.
- The initial court dismissed her personal injury claim against the city after the trial court granted summary judgment in favor of the city on its recreational immunity defense.
- **But two issues arose in appeal: 1) whether the walk on the trail was recreation, and 2) whether the trail even falls under recreational immunity statute.**
- The plaintiff argued that there are issues of material fact concerning her use of the city's land and a jury could conclude that her purpose was not principally recreational, and that her injuries did not arise out of the recreational use of the city's land, defeating the city's recreational immunity defense.
- Plaintiff also argued that ORS 105.688(1)(c) extends recreational immunity only to unimproved access trails, and because the city improved, designed, and maintained the trail for the purpose of accessing the beach, the city is not entitled to recreational immunity.
- The court agreed that issues of material fact exist about plaintiff's use of the trail and that the city was not entitled to prevail on its recreational immunity defense as a matter of law. They also agree that the Ocean to Bay Trail is not an unimproved access trail entitled to immunity

under ORS 105.688(1)(c). But whether recreational immunity otherwise applies to the trail as land adjacent to the ocean shore under ORS 105.688(1)(a) depends on plaintiff's purpose in using the land and material issues of fact exist on that question.

- So, they reversed and remanded back to lower court to decide case.

### Legislative Solution: SB 1576 -3 amendments

- 2024 Legislative Session: Advocate for legislative language that adds “walking, running, and biking” to the definition of recreational purposes (ORS 105.672) and adds improved trails to the recreational immunity provided via ORS 105.688.
- 2024 Interim: Pursue a more comprehensive fix to the recreational immunity statutes with all stakeholders at the table to be introduced in the 2025 legislative session.

*Help us keep trails open to the public by supporting this needed clarification of legislative intent.*



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