

FACT SHEET ON HB 2879

HB 2879 re-establishes what had been considered a 40 year protection to landowners by clarifying that land used for access to places where people intend to recreate is covered by the immunity granted under ORS 105.682. It further clarifies that the definition of an “owner” includes easement holders or right of way holders.

The Legislative Assembly has declared it to be 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 woodcutting and for the harvest of special forest products by limiting their liability toward persons entering thereon for such purposes.¹ To support this policy, the Legislative Assembly granted immunity for personal injury, death or property damages to land owners that permit any person to use their land for recreational purposes.² Furthermore, the Legislative Assembly has defined “recreational purposes” to include outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.³

However, in *Liberty v. State of Oregon*, 342 Ore. 11 148 P. 3d 909, the Supreme Court in 2006 overturned the Tillamook County Circuit Court and the Oregon Appeals Court and eliminated what was believed to be immunity granted to land owners (whether private or public) who permit people to cross their land in order to gain access to land for recreational purposes. Specifically, the Supreme Court interpreted the immunity provision contained in ORS 105.682 by ruling that “the words of the legislature... demonstrate its intent to grant immunity to only the owner of the land that itself is used for recreational purposes, and that recreational purposes does not include crossing one person’s land to gain access to another person’s land to recreate there.”

The Supreme Court’s ruling was based on the text and context in ORS 105.682. However, the court also stated that there was evidence in the legislative history that legislators were aware that at least one member of the public viewed the act as providing immunity to lands used to gain access to public recreational lands. Furthermore, the statute has been amended several times since its inception and the legislative history, according to the Appeals Court, does not suggest that the legislature intended to alter the “basic thrust” of the statute.

Because the definition of recreational purposes “includes, but is not limited to,” the question before the legislature is whether “access” to lands for the purpose of recreating is a recreational purpose. We believe that the policy of the state and legislative history suggests that access to adjoining land was intended to be covered. Without this important clarification, lands that have been used to access some of the most significant recreational areas within the state may no longer be available to the public

¹ ORS 105.676

² ORS 105.682

³ ORS 105. 672(5)