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Recreational Use Immunity

What is it?

- Recreational use immunity limits liability for landowners who open their property up to the public, free of charge, for recreational purposes.[1] This defense is available to both private and public schools.
- On July 6, 2023, the Oregon Court of Appeals held in *Fields v. City of Newport* that the question of whether recreational use immunity shielded a landowner from liability in a case arising out of a plaintiff's use of an improved trail depended on the plaintiff's subjective intent at the time of their injury, not the plaintiff's objective activities. This decision effectively ended recreational use immunity for improved trails and generated uncertainty regarding the application of recreational use immunity in other contexts.[2] In 2024, in response to *Fields*, the legislature provided a temporary fix by passing SB 1576. Specifically, SB 1576 amended the statutory definition of "recreation" to include walking, biking, and running and stipulated that recreational immunity applies to both improved and unimproved trails. The bill has a sunset of January 2026 so the legislature will need to pass a permanent solution in 2025 to preserve these changes.

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[1] ORS §§ 105.682; 105.688.

[2] *Fields v. City of Newport*, 326 Or.App. 764 (2023). The facts in *Fields* were as follows. The plaintiff had been walking on the beach with a friend and their dogs. From the beach, the plaintiff accessed an improved trail which was owned and maintained by the City of Newport. While traversing the improved trail, the plaintiff slipped and fell. The plaintiff then filed a lawsuit against the City. The City argued it was immune from suit based on recreational use immunity, because the plaintiff had been using the trail for a recreational purpose at the time of her injury. The plaintiff responded that her subjective intent in using the trail was not recreational and argued that the question of whether her purpose in using the trail was "principally recreational" needed to go to a jury. The Court of Appeals agreed with the plaintiff.

When does this defense come into play?

- Let's say a school opens up its fields and playgrounds to the public, free of charge, for recreational purposes on the weekends. If a member of the public injures themselves and later files a lawsuit, this defense may be available. What exactly the person was doing when they injured themselves will be an important issue, but "recreational purposes" is broadly defined, and includes hunting, fishing, walking, running, bicycling, swimming, camping, picnicking, hiking, nature study, and outdoor educational activities.[3]

Why does the recreational use immunity defense exist?

- This defense exists to increase the amount of land available for outdoor activities. In exchange for providing free access to land, property owners are immunized from certain liability that might result from the use of their land. This defense traces back to nineteenth century Wisconsin, where landowners were concerned about deer destroying trees on their property. The landowners wanted to allow hunters onto their property to reduce the deer population but feared getting dragged into lawsuits from accidents occurring on their land. To address the problem, the landowners convinced the Legislature to pass a recreational use immunity law—and the idea spread.[4]

Who can take advantage of this defense?

- Public and private landowners who permit the public to enter their property, free of charge, for recreational purposes. It is important to note who cannot take advantage of this defense. School employees

[3] ORS § 105.672(5); 2024 SB 1576.
[4] *Conant v. Stroup*, 183 Or.App. 270, 277 (2002).

are not covered by recreational use immunity, and thus are not immune from liability for their negligence.[5]

- SB 1576 provides that public and private landowners are immune from liability if a right of way to a recreational area has not been improved, designed, or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products.
- Additionally, under SB 1576, if the right of way has been improved, the landowner will be immune from liability as long as the right of way is not a highway maintained under ORS 810.010 and the improvement, design, or maintenance was completed in a manner that does not constitute either (1) gross negligence or reckless, wanton, or intentional misconduct or (2) an activity for which the actor is strictly liable without regard to fault.

How can I take advantage of this defense?

- Do not charge admission in exchange for permission to use school property for recreation.
- Landowners can still be sued in cases involving reckless or intentional misconduct. SB 1576 only protects landowners in cases of ordinary negligence.
- To prevent a lawsuit, ensure that staff properly maintain school grounds and equipment that are opened up for recreational use, and carry out other assigned responsibilities, such as inspection schedules and posting of signs warning of potential dangers.

[5] *Johnson v. Gibson*, 358 Or. 624 (2018).