

Chapter 477

Protection of Forests and Vegetation from Fire

Chapter 477

NOTES OF DECISIONS

Any conduct previously regarded as negligent was not intended to be rendered lawful by the Forest Protection Act; the Act does not evidence a purpose to permit greater freedom of conduct upon forest land. *Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co.*, (1935) 149 Or 126, 40 P2d 703.

Duties and liabilities of this chapter are aimed at commercial marketing of timber, not removal of trees to facilitate a particular land use. *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524.

FURTHER CITATIONS: Northern Wasco County P.U.D. v. Wasco County, (1957) 210 Or 1, 305 P2d 766; *Sproul v. State Tax Comm.*, (1963) 234 Or 579, 383 P2d 754; *Myers v. Bd. of Directors*, (1971) 5 Or App 142, 483 P2d 95.

ATTY. GEN. OPINIONS: Legislative intent to create comprehensive fire districts with no overlapping functions or double burdens, 1958-60, p 215; authority for cooperative fire protection agreements, 1960-62, p 294; budgeting reserves for major equipment, 1962-64, p 227; authority to acquire land for lookout site, 1962-64, p 351.

LAW REVIEW CITATIONS: 49 OLR 150.

477.001

NOTES OF DECISIONS

Electrical power company which obtained easement to extend its power lines and which was authorized by grant to clear trees and brush was not "owner," "operator" or "person in possession" under this section. *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524.

FURTHER CITATIONS: *State v. Gourley*, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; *Sproul v. State Tax Comm.*, (1963) 234 Or 579, 383 P2d 754; *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333.

ATTY. GEN. OPINIONS: Responsibility for fires and removing of slash on an "operating area," 1942-44, p 25; inclusion of lands not subject to protection by State Forester within definition of "fire protection district," 1956-58, p 80; "grazing land" and "timberland" as component parts of forest land, 1958-60, p 215.

477.005

CASE CITATIONS: *Sproul v. State Tax Comm.*, (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Use of revolving fund by State Forester where reimbursing funds unavailable, 1960-62, p 370.

477.062

NOTES OF DECISIONS

Payment of fire patrol assessments by the owner of timberland prevents any liability from attaching to him under this section, but does not warrant an independent logging company conducting its logging operations on the lands in question in a negligent or careless manner, regardless of fire hazards. *Carter v. LaDee Logging Co.*, (1933) 142 Or 439, 18 P2d 234, 20 P2d 1086.

The codification of the laws of negligence was not intended by the Forest Protection Act; a spark emitting industry must shut down during the periods of drought, if that is the only available means of overcoming the fire hazards created by it. *Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co.*, (1935) 149 Or 126, 40 P2d 703.

In a decree to abate a city trash dump located in timberland if the city refuses to take measures which will safeguard it, the safeguards should contemplate nothing less than the protection exacted by statutes such as this one. *Richardson v. Murphy*, (1953) 198 Or 640, 259 P2d 116.

FURTHER CITATIONS: *Arneil v. Schnitzer*, (1944) 173 Or 179, 144 P2d 707; *Starker v. Scott*, (1948) 183 Or 10, 190 P2d 532; *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333.

ATTY. GEN. OPINIONS: Procedure in collecting the expense of fire patrol rendered necessary by owner, 1924-26, p 283; liability where slash cannot be cleaned up because of conditions, 1938-40, p 85; reimbursements of expenditures from General Fund as reverting to General Fund, 1956-58, p 81.

LAW REVIEW CITATIONS: 1 WLJ 417; 2 WLJ 250, 309-332.

477.064

CASE CITATIONS: *State v. City of Marshfield*, (1927) 122 Or 323, 259 P 201; *State v. Gourley*, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524; *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333; *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

ATTY. GEN. OPINIONS: Reimbursements of expenditures from General Fund as reverting to General Fund, 1956-58, p 81; ratification of fire-fighting expenses, 1960-62, p 370.

477.066

NOTES OF DECISIONS

Under a former similar statute, a city was responsible for the cost of putting out a fire on forest land owned by the city, and the fact that merchantable timber was reserved when the land was sold to the city did not excuse it from responsibility. *State v. City of Marshfield*, (1927) 122 Or 323, 259 P 201.

A logging company operating on the land of another under contract with the latter may be liable for damages

from fire under this section, while the owner of the land may be entirely free of liability for such damages. *Carter v. LaDee Logging Co.*, (1933) 142 Or 439, 18 P2d 234, 20 P2d 1086.

Owner of timberland has general duty to make every reasonable effort to control and extinguish fires on such land. *State v. Gourley*, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117.

In determining whether landowner made every reasonable effort to control fire, jury should consider all the circumstances that would influence a reasonable man in determining what he should do to fully comply with the law. *Id.*

Fact that fire was not controlled is not conclusive proof that landowner failed to make every reasonable effort to control it. *Id.*

This section was constitutional. *Id.*

An easement holder is not an "owner," "operator" or "person in possession." *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524.

FURTHER CITATIONS: *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333; *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

ATTY. GEN. OPINIONS: Authority of forester to enter into contract with county, providing for protection of timberlands from damage by fire and freedom from liability of the owner to others arising on account of fires, 1936-38, p 495; the owner, operator, and possessor of property classed as "operating area" as responsible for fire control, 1942-44, p 25; reimbursements of expenditures from General Fund as reverting to General Fund, 1956-58, p 81; ratification of fire-fighting expenses, 1960-62, p 370.

LAW REVIEW CITATIONS: 2 WLJ 309-332.

477.067

CASE CITATIONS: *State v. Gourley*, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524; *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333; *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

LAW REVIEW CITATIONS: 2 WLJ 318.

477.068

NOTES OF DECISIONS

Under a former similar statute, the fact that the reasonable cost of fighting the fire might exceed the value of the land did not render the statute invalid. *State v. City of Marshfield*, (1927) 122 Or 323, 259 P 201.

Under a former similar statute, no evidence was necessary that the state paid out any sum of money for expenses in controlling or extinguishing the fire. *Id.*

Reason for which forest protective agency undertakes fire-fighting effort is immaterial to state's right to recover costs thereof. *State v. Gourley*, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117.

An easement holder is not an "owner," "operator" or "person in possession." *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524.

Action for costs authorized by this section does not contain the necessary elements of a claim under the U.S. Tort Claims Act. *Oregon v. United States*, (1962) 308 F2d 568, aff'g 195 F Supp 276, cert. denied, 372 US 941, 9 L Ed 2d 967, 83 S Ct 934.

The basis of an action brought under this section is common-law negligence. *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

Evidence, though illegally obtained by administrative officers, will not be excluded in a civil proceeding. *Id.*

FURTHER CITATIONS: *Kesterson v. Calif. Ore. Power Co.*, (1925) 114 Or 22, 228 P 1092; *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333.

ATTY. GEN. OPINIONS: The owner, operator and person in possession of property classed as an "operating area" as responsible for fire control, 1942-44, p 25; fire patrol assessments as part of county levy of taxes for purposes of collection, 1950-52, p 44; reimbursements of expenditures from General Fund as reverting to General Fund, 1956-58, p 81; ratification of fire-fighting expenses, 1960-62, p 370.

LAW REVIEW CITATIONS: 36 OLR 282; 2 WLJ 320.

477.069

CASE CITATIONS: *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524; *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

477.085

CASE CITATIONS: *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333; *State Forester v. Umpqua R. Nav. Co.*, (1970) 258 Or 10, 478 P2d 631.

LAW REVIEW CITATIONS: 2 WLJ 309-332.

477.090

NOTES OF DECISIONS

The codification of the laws of negligence was not intended by the Forest Protection Act, and no part thereof is repugnant to the common-law doctrine of negligence. *Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co.*, (1935) 149 Or 126, 40 P2d 703.

Double damages are recoverable for breach of the common-law duties as to the exercise of due care for the prevention of fire, as well as, for breaches of the statutory duties. *Id.*

The complaint did not bring defendant within the class of persons liable under this section. *State Forester v. Obrist*, (1964) 237 Or 63, 390 P2d 333.

FURTHER CITATIONS: *Eastman v. Jennings-McRae Logging Co.*, (1914) 69 Or 1, 138 P 216, Ann. Cas. 1916A, 185; *Johnson v. Jennings Logging Co.*, (1914) 70 Or 16, 138 P 236; *Arnel v. Schnitzer*, (1944) 173 Or 179, 144 P2d 707; *Fairview Farms, Inc. v. Reynolds Metals Co.*, (1959) 176 F Supp 178, 189; *State v. Calif. Ore. Power Co.*, (1961) 225 Or 604, 358 P2d 524; *Southern Pac. Co. v. Campbell McLean, Inc.*, (1962) 232 Or 467, 376 P2d 77.

LAW REVIEW CITATIONS: 36 OLR 282; 2 WLJ 309-332.

477.120

NOTES OF DECISIONS

1. Under former similar statute

The Forest Protection Act was not repugnant to the common-law doctrine of negligence, and the common-law principle that men must exercise due care to avoid inflicting injuries upon others. *Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co.*, (1935) 149 Or 126, 40 P2d 703.

Membership in a fire association which assumed control of the fire fighting efforts did not relieve the person negligently permitting a fire to be started from responsibility for damages caused thereby.

An easement holder was not an "owner," "operator" or

"person in possession." State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

FURTHER CITATIONS: State v. City of Marshfield, (1927) 122 Or 323, 259 P 201.

LAW REVIEW CITATIONS: 2 WLJ 318.

477.210

NOTES OF DECISIONS

A former similar statute was constitutional as a reasonable and proper police regulation to protect the forests of the state from fire. First State Bank v. Kendall Lbr. Co., (1923) 107 Or 1, 213 P 142.

The payment of state fire patrol assessments by the owner of timber lands was considered adequate protection within the meaning of a former similar statute. Carter v. La Dee Logging Co., (1933) 142 Or 439, 18 P2d 1086.

FURTHER CITATIONS: Arneil v. Schnitzer, (1944) 173 Or 179, 144 P2d 707; Starker v. Scott, (1948) 183 Or 10, 190 P2d 532; Richardson v. Murphy, (1953) 198 Or 640, 259 P2d 116; State v. Gourley, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Inclusion of lands not subject to protection by State Forester within definition of "fire protection district," 1956-58, p 80.

LAW REVIEW CITATIONS: 2 WLJ 250, 309-332.

477.220

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Forest patrol assessments on lands within rural fire protection district which revert to forest lands, 1958-60, p 215.

477.225

ATTY. GEN. OPINIONS: Costs incurred on emergency fires, 1958-60, p 175; fire protection district boundary changes due to land use changes, 1958-60, p 215.

LAW REVIEW CITATIONS: 2 WLJ 309-332.

477.230

NOTES OF DECISIONS

See also cases under ORS 477.210.

FURTHER CITATIONS: State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

ATTY. GEN. OPINIONS: Retirement program for employes, 1960-62, p 294.

477.235

ATTY. GEN. OPINIONS: Inclusion of lands not subject to protection by State Forester within definition of "fire protection district," 1956-58, p 80; inclusion of certain items in a fire protection district tentative budget, 1956-58, p 80; "estimated balance or deficit from the previous fiscal year" defined, 1956-58, p 80; retirement program for employes, 1960-62, p 294; budgeting reserves for major equipment, 1962-64, p 227.

477.270

NOTES OF DECISIONS

See also cases under ORS 477.210.

ATTY. GEN. OPINIONS: Authority to direct assessor to extend upon the roll estimated costs to be incurred, 1954-56, p 23; inclusion of certain items in a fire protection district tentative budget, 1956-58, p 80; retirement program for employes, 1960-62, p 294; budgeting reserves for major equipment, 1962-64, p 227; construing "levy," 1964-66, p 429.

477.285

CASE CITATIONS: State v. Gourley, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

477.291

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

477.300

ATTY. GEN. OPINIONS: Budgeting reserves for major equipment, 1962-64, p 227.

477.355

ATTY. GEN. OPINIONS: Constitutionality under prohibition against holding two lucrative offices, 1958-60, p 395.

477.365

CASE CITATIONS: State v. Gourley, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

ATTY. GEN. OPINIONS: Constitutionality of service of national fire service officers as fire wardens, 1958-60, p 395.

477.370

CASE CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.406

ATTY. GEN. OPINIONS: Retirement program for employes, 1960-62, p 294.

477.425

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

477.440

ATTY. GEN. OPINIONS: Same person as, administrator and executive assistant to assistant forester, 1960-62, p 296.

477.460

ATTY. GEN. OPINIONS: Same person as, administrator and executive assistant to assistant forester, 1960-62, p 296.

477.505

LAW REVIEW CITATIONS: 2 WLJ 315.

477.510

CASE CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.515

NOTES OF DECISIONS

Under former similar statute any conduct previously regarded as negligent was not intended to be rendered lawful by the Forest Protection Act, and the Act does not evidence a purpose to permit greater freedom of conduct upon forest land. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

FURTHER CITATIONS: Anderson v. Eischen, (1926) 16 F2d 54.

ATTY. GEN. OPINIONS: Necessity of person engaged in logging or wood cutting to obtain permit to burn slashings, 1924-26, p 388.

477.545

CASE CITATIONS: State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

477.565

NOTES OF DECISIONS

Under former similar statute, the omission to obey the statutory duties imposed by the Forest Protection Act, by a spark emitting industry, gave rise to a single cause of action only in favor of a party injured. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

FURTHER CITATIONS: State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

477.570

NOTES OF DECISIONS

This section does not require a logging company to keep the right of way of its logging railroad clear of all inflammable material, except in so far as that material may consist of "tops and inflammable refuse left after logging or wood cutting." Carter v. La Dee Logging Co., (1933) 142 Or 439, 18 P2d 234, 20 P2d 1086.

It is the duty of both the owner of timberlands and one engaged by him under contract to log off such lands, to burn the annual slashings resulting from logging operations. Id.

The logger cannot escape liability for disobedience of the statute regardless of whether he acted as agent or independent contractor, and regardless of whether or not the condition existing on the land and prohibited by the statute was brought about by or resulted from his acts. Id.

FURTHER CITATIONS: Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703; State v. Gourley, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

ATTY. GEN. OPINIONS: Necessity of person engaged in logging or wood cutting to obtain permit to burn slashings, 1924-26, p 388; responsibility for slash on land classed as "operation area", 1942-44, p 25.

LAW REVIEW CITATIONS: 36 OLR 276, 282; 2 WLJ 250, 309-332.

477.575

CASE CITATIONS: Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703; State v. Gourley, (1957) 209 Or 363, 305 P2d 396, 306 P2d 1117; State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524.

LAW REVIEW CITATIONS: 2 WLJ 250.

477.645

CASE CITATIONS: State Forester v. Obrist (1964) 237 Or 63, 390 P2d 333.

477.650

NOTES OF DECISIONS

The omission to obey the common-law rule as to negligence and the statutory duties imposed by the Forest Protection Act, by a spark emitting industry gives rise to a single cause of action only in favor of a party injured by such omission. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

FURTHER CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.660

CASE CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.665

NOTES OF DECISIONS

The complaint stated a cause of action for damages caused by omission to perform statutory duty. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

FURTHER CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.670

CASE CITATIONS: State Forester v. Umpqua R. Nav. Co., (1970) 258 Or 10, 478 P2d 631.

477.685

NOTES OF DECISIONS

The Forest Protection Act does not permit greater freedom of conduct upon forest land than that previously regarded as negligent. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

477.690

NOTES OF DECISIONS

The Forest Protection Act does not permit greater freedom of conduct upon forest land. Silver Falls Tbr. Co. v. Eastern & Western Lbr. Co., (1935) 149 Or 126, 40 P2d 703.

477.710

CASE CITATIONS: State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333.

477.830

LAW REVIEW CITATIONS: 2 WLJ 332.

477.920

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

477.930**NOTES OF DECISIONS**

This section was constitutional as an exercise of the police power. Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

The label the legislature places on a levy is not conclusive of the nature of the levy. Id.

ATTY. GEN. OPINIONS: Costs incurred on emergency fires, 1958-60, p 175; construing "levy," 1964-66, p 429.

LAW REVIEW CITATIONS: 2 WLJ 332.

477.940

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Construing "levy," 1964-66, p 429.

477.960

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Construing "levy," 1964-66, p 429.

477.970

CASE CITATIONS: Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754.

ATTY. GEN. OPINIONS: Costs incurred on emergency fires, 1958-60, p 175.

477.993

CASE CITATIONS: State v. Calif. Ore. Power Co., (1961) 225 Or 604, 358 P2d 524; Sproul v. State Tax Comm., (1963) 234 Or 579, 383 P2d 754; State Forester v. Obrist, (1964) 237 Or 63, 390 P2d 333; State v. Johnson, (1969) 1 Or App 363, 462 P2d 687.