

MEMORANDUM

TO: Yachats Trails Committee

FROM: K. Layne Morrill

DATE: July 16, 2007

RE: Recreational Use Immunity Statute

If certain requirements are met, an owner is relieved from potential liability for personal injury, death, or property damage arising out of other people's use of that owner's land for "recreational purposes." O.R.S. § 105.682. In order to achieve this limitation of liability, the following requirements must be met:

1. The owner of the land "either directly or indirectly permits any person to use the land for recreational purposes." O.R.S. § 105.682(1). This has been construed to mean "permits the general public" not permits certain specific persons. See below.
2. The principal purpose for the injured person's presence on the land must have been for recreational purposes, even though the injury, death, or damage occurred while the person was "engaging in activities other than use of the land for recreational purposes." O.R.S. § 105.682(1).
3. Either: (a) the owner of private lands must make no charge for permission to use the land, O.R.S. § 105.688(2)(a); or (b) the owner "transfers an easement to a public body to use the land," O.R.S. § 105.688(2)(b).

The limitation on liability does not apply where the owner of land causes "intentional injury or damage to a person coming on to land for recreational purposes . . ." O.R.S. § 105.682(2).

The Oregon Court of Appeals has upheld the constitutionality of this statute. In *Brewer v. Department of Fish and Wildlife*, 2 P.3d 418, 424-428 (Or.App. 2000), a plaintiff argued that these statutes violate Article 1, Section 10, of the Oregon Constitution, which provides in part that "every man shall have a remedy by due course of law for injury done him in his person, property, or reputation." The Court of Appeals, reviewing a series of Oregon Supreme Court opinions on closely related issues, held that "by permitting recreational land owners to limit their liability in the event they choose to open their lands to the public for recreational purposes without charge," the legislature struck "an acceptable balance by conferring certain benefits and certain detriments on both the land owners involved and on the recreational users of land." 2 P.3d at 428.

In *Conant v. Stroup*, 51 P.3d 1263 (Or.App. 2002), the Court of Appeals concluded that an owner, in order to qualify for immunity under this statute, must grant permission to use land for recreational purposes "to the public generally," not just to a few specific persons who are members