

February 19, 2015

Subject: HB2038 Support

To: The Honorable Chairman Clem and Members of the House Rural Communities Committee

Submitted by:

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My wife and I farm in both Yamhill and Harney counties. On both of these farms we have airstrips to accommodate the use of our light aircraft. These airstrips are registered with both the FAA and the Oregon Department of Aviation as private/restricted meaning that prior permission is required for their use. The Oregon Department of Aviation has registered 323 Oregon airports listed as private airstrips in the state. Each of these airports has similar restrictions to their use.

Oregon has public policy encouraging the use of landowners with ORS 105.676 stating: " 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..."

The issue at hand, and the reason for the support, is that the definition section of Oregon's Recreational Use Statute (RUS) is unclear. All states west of the Mississippi, with the notable exception of Oregon and Colorado, have addressed this issue within their RUS by including aviation. Oregon needs to do the same. If someone lands on my property for recreational purposes, I should enjoy the same type of liability protection granted under the RUS that would extend to me if someone drove or walked onto my property.

With the existing cloud as to owner liability many airstrips owners are reluctant to allow use of their airstrips which they would otherwise allow. This is not good for the landowner or the operator of the aircraft desiring to use some land for recreational purposes.

Federal law, FAA Regulation Section 91.103 provides information as to the responsible party dealing with aviation activities by stating that the pilot is responsible for all segments of a proposed flight by gathering all available information. This, naturally, means the appropriateness of the intended landing. If the pilot is not satisfied as to the safety of an intended landing place he/she MUST not land. Without the passage of HB2038, the responsibility, and liability for a suitable landing site would, in Oregon anyway, be the responsibility of the landing surface owner, and not the pilot of the aircraft.

Throughout the year we have countless aircraft that land on our strips without any notice to us as to their intention to use our land. Whenever someone does ask us for permission to land, I give them my the most current information as to the suitability and status of the airstrip along with the knowledge they are doing so at their own risk. Just because an airstrip exists, it doesn't mean it's safe to land on anymore than a frozen over pond means it's safe to ice skate on. The RUS provides that if the person doing the recreating chooses to do so, he does it at his own risk.

FAA regulations allow for a pilot to land off airport IF the landing can be done safely and without violating existing pertinent laws. Off-airport landings for recreational purposes are done everyday all across Oregon on land both public and private land once the pilot has determined the legality and safety of his landing. The owners of these lands are in most instances completely unaware that these landings occurred. We need the passage of HB 2038 to grant a layer of liability protection to these land owners.

HB 2038 doesn't: 1. Change any land use law or regulation; 2. Prevent any landowner from denying the use of his land as he sees fit; 3. Cause any negative financial impact.

HB 2038 DOES: Provide needed clarification as to liability protection provided to landowners of aircraft landing areas.

I urge passage of HB 2038.

From Oregon Statute:

105.676 Public policy. 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. [1995 c.456 §2; 2009 c.532 §3]

105.682 Liabilities of owner of land used by public for recreational purposes, gardening, woodcutting or harvest of special forest products. (1) Except as provided by subsection (2) of this section, and subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products when the owner of land either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products. The limitation on liability provided by this section applies if the principal purpose for entry upon the land is for recreational purposes, gardening, woodcutting or the harvest of special forest products, and is not affected if the injury, death or damage occurs while the person entering land is engaging in activities other than the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(2) This section does not limit the liability of an owner of land for intentional injury or damage to a person coming onto land for recreational purposes, gardening, woodcutting or the harvest of special forest products. [1995 c.456 §3; 2009 c.532 §4]

Federal Law from Federal Aviation Regulations:

FAR Section 91.3 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

FAR Sec. 91.103 — Preflight action. Each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight....