

Maine's Rail with Trail Liability Amendment

An Act To Clarify That Certain Maine Landowner Liability Protection Laws Apply to Certain Railroad Properties, Railroad Rights-of-way and Utility Corridors

Maine is often cited as a state having strong landowner liability indemnity protection. Given its rural character, low population density and low percentage of public land, Maine's recreational use statute has been considered critical for public access, outdoor recreation and tourism-based business. In fact, there has not been a single reported successful case against a landowner where the Maine landowner liability law applied (since 1979, amended in 1995, in 2004 to protect those who build snowmobile trails, and now again in 2005).

The genesis of this 2005 amendment lies with the efforts of volunteer trail advocates, in particular, John Andrews, the president of the Eastern Trail Alliance. The Eastern Trail is a constituent section of the East Coast Greenway and it is planned to extend from Portland, Maine south to Portsmouth, NH. The envisioned and best route for the trail is beside an active rail line for a couple of short sections----less than a mile in Saco, ME and ¼ mile in South Portland, ME. Each section supports 4 trains per month. The rail operators, when approached about a rail with trail, raised the liability concern. They insisted that the local trail organization would have to secure a liability insurance policy and cross indemnify the RR operator.

Of course, such a policy is prohibitively expensive for a non-for-profit trail group or even a municipality. In one example, the cost of this specified policy would have increased liability insurance costs from approximately \$500 annually to about \$60,000 annually. Part of the reason for the high cost is that liability and insurance issues for a rail-with-trails are not widely

understood, and are often misunderstood. Maine's landowner recreational use statute already includes immunity for railroad and utility corridor owners, but many attorneys are unfamiliar with this protection. Out-of-state attorneys for utilities and rail operators were especially reluctant to depend upon Maine's landowner recreational immunity statute.

To make it explicitly clear that this immunity is provided by Maine Law, Senator Barry Hobbins, Chairman of the Joint Legislative Judiciary Committee, introduced such clarifying legislation (at the request of John Andrews) in December 2004. John worked with motorized and non-motorized trail groups statewide, Rails-to-Trails Conservancy, the Maine Trial Lawyers Association and the Bicycle Coalition of Maine in securing the support of legislators and state agencies. With the signing of the legislation by Governor John Baldacci on June 10, 2005, landowner liability issues for Maine utilities with trails and railroads with trails have virtually disappeared.

Since the 2005 law is an amendment of the definition of "Premises" in the existing statute, a copy of this law is not self-explanatory in isolation. The attached document shows the existing law with the amendment language. Statute language is not the easiest to follow. A brochure, "Maine Landowner Liability Explained" was developed and widely-distributed, which gives a layperson explanation of the statute.

RESOURCES ON THE WEB

The current recreational use statute in Maine with the 2005 amendment.

<http://janus.state.me.us/legis/statutes/14/title14sec159-a.html>

Text of the "MAINE Landowner Liability Explained" brochure, from Maine Department of Inland Fisheries and Wildlife website. (first issued in 1981 and does not reflect the 2005 amendment).

<http://www.state.me.us/ifw/aboutus/landownerrelations/landownerliability>.

[htm](#)

Summary of the Maine statute (before the 2005 amendment) on American Whitewater's website:

http://www.americanwhitewater.org/resources/repository/Maine_Recreational_Use_Statute.htm

“Landowner Liability” a nice review of recreational use statutes across the country by Tina Burghardt, IMBA, 1996

http://www.imba.com/resources/trail_issues/land_liability.html

A Mountain Bike Liability Primer by Stuart Ulferts, IMBA -- general background and explanation of terms.

<http://www.gilawilderness.com/sportspg/liabprim.htm>

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EDITOR'S COMMENTS ARE "IN CAPS"

THIS LEGISLATION (LD 1611) PROVIDES CLARIFICATION THAT RAILROAD AND UTILITY CORRIDORS HAVE THE SAME DEGREE OF LIABILITY PROTECTION THAT ALL LANDOWNERS IN MAINE HAVE. IT WAS SUBMITTED IN DECEMBER, 2004 AND FIRST CONSIDERED IN COMMITTEE MAY, 2005. THE BILL WAS SIGNED BY THE GOVERNOR ON JUNE 10, 2005.

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| Be it enacted by the People of the State of Maine as follows: | |
| Sec. 1. 14 MRSA §159-A, sub-§1, ¶A, as amended by PL 1993, c. 622, §1, | |

is further amended to read:

A. "Premises" means improved and unimproved lands, private ways, roads, lands within the right-of-way of a portion of a railroad line that are used as part of a designated recreational trail or utility corridors that are used as part of a designated recreational trail, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands.

SUMMARY

This bill adds railroad right-of-ways and utility corridors

that are used as part of a designated recreational trail to the definition of "premises" in the law that limits a landowner's liability when allowing recreational activities or harvesting activities on the lands.

BELOW IS THE MAINE STATUTE THAT IS CITED PROVIDING LANDOWNER LIABILITY PROTECTION. THE ABOVE BILL, LD 1611, WILL AMEND THIS STATUTE.

GENERAL SUMMARY: A landowner that allows persons onto his or her land free of charge for recreational purposes (including hunting), is not responsible or liable to such persons for injuries or damages they might sustain or cause while on the land.

Title 14; §159-A. Limited liability for recreational or harvesting activities

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§159-A. Limited liability for recreational or harvesting activities

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings. [2003, c. 509, §1 (amd).]

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands.

[1993, c. 622, §1 (amd).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry

of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting.

[2001, c. 113, §2 (amd).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use.

[2003, c. 509, §1 (new).]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises. [1995, c. 566, §1 (amd).]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby: [1995, c. 566, §1 (amd).]

A. Extend any assurance that the premises are safe for those purposes;

[1979, c. 253, §2 (new).]

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or

[1979, c. 253, §2 (new).]

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

[1993, c. 622, §1 (amd).]

4. Limitations on section. This section does not limit the liability that would otherwise exist: [1995, c. 566, §1 (amd).]

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;

[1979, c. 253, §2 (new).]

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or

[1995, c. 566, §1 (amd).]

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

[1995, c. 566, §1 (amd).]

5. No duty created. Nothing in this section creates a duty of care or

ground of liability for injury to a person or property. [1993, c. 622, §1 (amd).]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section. [1995, c. 566, §1 (amd).]

PL 1979, Ch. 253, §2 (NEW).

PL 1979, Ch. 514, §1 (AMD).

PL 1979, Ch. 663, §75 (AMD).

PL 1983, Ch. 297, §2 (AMD).

PL 1985, Ch. 762, §25 (AMD).

PL 1993, Ch. 622, §1 (AMD).

PL 1995, Ch. 566, §1 (AMD).

PL 2001, Ch. 113, §2 (AMD).

PL 2003, Ch. 509, §1 (AMD).