

**Testimony Before the Oregon Legislature**, Committee on Economic Development, Small Business, and Trade

**In Support of HB 3140, Restoring the Legal Power of Liability Waivers**

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Chair Nguyen, Vice Chairs Isadore and Diehl, and Members of the Committee on Economic Development, Small Business, and Trade,

Thank you for the opportunity to testify today. My name is Hannah Wintucky, and I represent the Outdoor Industry Association (OIA), the national trade association representing the \$1.1 trillion outdoor recreation economy. The outdoor industry supports more than 5 million jobs nationwide, and here in Oregon, outdoor recreation is an economic powerhouse, contributing \$8.37 billion in value-added impact, 2.6% of the state's GDP, and supporting 72,925 jobs—3.6% of the total wage and salary employment in the state.

Oregon ranks 13th in the nation for outdoor recreation participation, with 62% of the state's population—nearly 2.48 million residents—engaging in outdoor activities. The state is home to 255 state parks spanning 110,000 acres, one national park, and an impressive 39.9% of its land designated as public land.

While I am here representing the outdoor industry, I am also an Oregonian, residing in Baker City. This issue is more than just an industry concern—it directly affects the lives of my fellow Oregonians and their ability to recreate in the Beaver State. Ensuring accessible and sustainable outdoor recreation opportunities is not just about economic impact but about preserving the outdoor way of life that defines our communities.

I am here today in strong support of House Bill 3140, which seeks to restore the enforceability of liability waivers in Oregon for recreational activities. HB 3140 provides much-needed clarity by allowing operators to require participants in outdoor recreation to assume responsibility for inherent risks. This legislation is essential to maintaining the viability of Oregon's recreation industry and ensuring continued access to outdoor opportunities for all. This issue is of critical importance not only to the viability of our outdoor businesses but also to ensuring the public's continued access to affordable and diverse recreational opportunities.

### **The Problem: Legal Uncertainty Jeopardizing Outdoor Recreation**

House Bill 3140 provides a necessary correction to Oregon's liability laws, ensuring that waivers for ordinary negligence are legally enforceable while still holding operators accountable for reckless or

willful misconduct. Additionally, the bill directs the Oregon Business Development Department, with assistance from the Department of Consumer and Business Services, to conduct a study on the challenges facing the recreation industry, including climate-related impacts and rising insurance costs. This study will provide valuable insights and recommendations for further policy improvements.

Recent court decisions in Oregon have significantly weakened the enforceability of liability waivers, creating uncertainty and risk for recreation providers across the state. Liability waivers are a long-standing and essential tool used nationwide to acknowledge and assume the inherent risks of activities like skiing, rafting, mountain biking, and guided tours.

Without reliable waivers, outdoor businesses face skyrocketing liability insurance costs, increased litigation risk, and potential closures. This is not just a business issue—it is a public access issue. When providers are forced to raise prices or eliminate services due to liability concerns, fewer people can afford to participate in outdoor recreation, especially families, students, and lower-income communities.

The existing liability laws are also bad for business. These laws, as they currently stand, create a competitive disadvantage when compared to other states. When guides and other service providers decide where to conduct business, they may opt for states with clearer liability protections, diverting valuable economic activity away from Oregon.

Adding to this challenge, the recently passed EXPLORE Act has revised national liability policy, reversing a 40-year ban on waivers at the federal level. On February 10, 2025, the National Park Service issued a policy change allowing concessions and Commercial Use Authorization (CUA) holders to adhere to state requirements for the use of exculpatory agreements. This long-overdue policy shift acknowledges the critical role waivers play in the recreation industry and helps align federal practices with state-level standards. We expect other land management agencies, such as the Forest Service and BLM, to follow suit soon.

However, despite this positive shift at the federal level, Oregon's existing liability laws remain an obstacle. The inconsistency between Oregon's liability policy and this new federal standard underscores the urgency of restoring the enforceability of waivers at the state level. When guides and other service providers decide where to conduct business, they may choose states with clearer liability protections over Oregon, diverting valuable economic activity elsewhere. The inconsistency between Oregon's restrictive liability laws and this new federal policy puts the state at a competitive disadvantage, making it imperative to restore the enforceability of waivers at the state level.

### **Why Liability Waivers Are Essential**

1. **Personal Responsibility & Inherent Risks:** Outdoor recreation inherently involves some level of risk. Participants understand and accept these risks when they sign a waiver. This

principle of personal responsibility is fundamental to maintaining access to outdoor experiences.

2. **Preserving Access & Affordability:** If businesses and non-profits are unable to reasonably manage their liability, they will be forced to pass costs onto consumers or discontinue operations. This would significantly impact Oregon's outdoor industry, from ski resorts and rafting outfitters to climbing gyms and youth camps.
3. **Legal Consistency with Other States:** Oregon is now an outlier in how liability waivers are handled. The vast majority of states uphold well-drafted waivers, recognizing their role in fostering a thriving recreation industry. Restoring the enforceability of waivers will align Oregon with national best practices and provide needed certainty to businesses operating in the state.

### **A Balanced Solution**

The proposed legislation does not provide blanket immunity for recreation providers. Businesses will still be held accountable for reckless or willful misconduct. However, by restoring the enforceability of waivers, we can ensure that reasonable risks remain the responsibility of participants—where they belong—and not a crippling legal burden on recreation providers.

### **Conclusion**

Oregon's outdoor recreation economy is a national leader, but without action, we risk undermining the very foundation that allows our industry to thrive. I urge this Committee to pass HB 3140 and restore the ability of outdoor businesses to responsibly manage risk, keep recreation accessible, and sustain the economic and social benefits that outdoor activities provide to our communities.

Thank you for your time and consideration. **Please vote yes on HB3140.** I yield back to the committee, and welcome any questions.