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Chair Nosse, Vice Chairs Nelson and Javadi, members of the House Committee on Behavioral Health and Health Care:

I write on behalf of the Oregon Trial Lawyers Association in opposition to HB 3324. This bill seeks to amend Oregon's products liability law as it has existed since at least 1967 (by common law judicial decisions) and would overturn the 2024 Oregon Supreme Court Case *Brown v. GlaxoSmithKline*.

In this case, the patient received a drug from the hospital to treat her nausea. The drug had not been tested for use on pregnant patients and its use ultimately resulted in the development of irreparable heart defects in her infant daughter.

The Supreme Court extensively reviewed the history of Oregon's product liability law and determined that the legislature had always intended to hold "hybrid" services and product sellers *liable for the sale of a defective product*. ("Hybrid" services and product sellers **are not liable under products liability law for services rendered**.) The 1979 Oregon legislature carefully considered the interest of business and insurance interests in legislative hearings before deciding to codify Oregon products liability law.

The hospital provided the defective drug, and the Court ruled that **hospital pharmacies are sellers of pharmaceuticals under the product liability statutes and therefore liable for harms caused by pharmaceuticals that they sell**. This ruling confirmed what the Oregon legislature has long maintained. In 1979 the Oregon legislature codified Oregon's "common law" products liability law for the purpose of "stabilizing" rapidly evolving judicial interpretation of strict products liability law across the US.

If passed, HB 3324 would have drastic implications for individual patients who are harmed by defective medical products and create barriers for their access to justice. HB 3324 would grant products liability immunity to a large class of entities ("healthcare facilities"), thereby separating them from every other combined service and product seller in the state of Oregon.

Oregon's products liability law has long held that "the public has the right to and does expect, in the case of products which it needs, and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods." (Restatement §402 A comment c¹.)

Hospital pharmacies are not very different than other pharmacies. They sell prescribed drugs to Oregonians. Hospital pharmacies in many cases provide the same exact drugs and out-patient

¹ [S070082, Opinion - Opinions -- Oregon Supreme Court - State of Oregon Law Library Digital Collection](#)



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pharmacy services as standard retail pharmacies. And the hospitals are ever expanding into the retail pharmacy market.

Moreover, hospitals hold a unique market position where they can realize much greater profits than the retail pharmacy for the same product. Through a captured market they grossly inflate the costs of the drug. (Most people have experienced the absurdities of such pricing, like a hospital charging \$50 for an ibuprofen tablet).

The hospital also enjoys greater profit margins on their drug sales than retail pharmacies due to (1) their ability to buy drugs at discounted rates through group purchasing strategies and (2) the use of the 340B drug pricing programs. This model of expanding hospital profit through pharmaceutical sales is growing in the modern approach of hospital administration.

The suggestion by the hospital industry to support this bill that their pharmaceuticals are simply incidental to emergency care is a non-truth. There is no need to allow hospital corporations a unique immunity from harms caused by their drug sales. Indeed, as a general matter, where pharmaceutical sales are ever expanding, pharmaceutical sales do not need less guard rails.

Injured and ill Oregonians do not get to choose the products sold to them by hospitals. Oregonians who are administered drugs or other medical products have always had the right to hold hospitals responsible if the hospital chose and sold a defective product. Further, the Oregon legislature should not seek to shield corporations from liability for pharmaceutical products that they are profiting from.²

The legislature should not change decades of sound legislative policy to conform to a single group's effort to obtain immunity from responsibility for its profit-making enterprises. We urge the committee to vote no on HB 3324 and protect Oregonians' access to justice when they are harmed by defective medical products.

²<https://www.oregon.gov/oha/HPA/ANALYTICS/HospitalReporting/Q2%202023%20Hospital%20Financial%20and%20Utilization%20Summary.pdf>