

SB 1517 B STAFF MEASURE SUMMARY

Carrier: Rep. Levy E, Rep. Helfrich

House Committee On Rules

Action Date: 03/04/26

Action: Do pass with amendments to the A-Eng bill. (Printed B-Eng.)

Vote: 7-0-0-0

Yeas: 7 - Bowman, Elmer, Grayber, Kropf, Pham H, Skarlatos, Wallan

Fiscal: Has minimal fiscal impact

Revenue: Has minimal revenue impact

Prepared By: Tisha Pascone

Meeting Dates: 3/2, 3/4

WHAT THE MEASURE DOES:

The measure allows recreation operators to require a liability release for ordinary negligence for injuries arising out of a sport, fitness, or recreational activity, or out of volunteering to maintain facilities or places used for the activity. The measure declares an emergency, effective on its passage.

Detailed Summary:

- Defines “operator” to include people who offer the opportunity to participate in a sport, fitness, or recreational activity, or who provide a facility or place for the activity
- Defines “sport, fitness, or recreational activity” to include indoor or outdoor activities involving elements of inherent risk, and gives examples
- Lists claims that cannot be waived with a liability release, including claims for greater than ordinary negligence and claims relating to the following:
 - Negligence per se
 - Maintenance or inspection of safety gear provided by the operator in connection with the activity
 - Negligent safety-related training of an employee or agent that causes injury
 - Abuse of a child or the physical or sexual abuse of an adult
 - Negligent hiring, training, credentialing, supervision, or retention of an employee or agent that caused injury constituting greater than ordinary negligence or an intentional tort
 - Vehicle operation or use, unless the participant uses the vehicle as part of the activity
- Conditions the enforceability of releases on the following:
 - The participant, or their parent or guardian, voluntarily signs the written release
 - The release is clear and unambiguous
 - The release discloses risks associated with the sport, fitness, recreational activity, or volunteering
 - The release waives the operator’s liability for damages for injuries resulting from those risks
- Allows nonconforming releases to be construed as enforceable within the measure’s requirements
- Makes the determination of whether a risk is inherent to the activity a question of law for the court
- Clarifies that nothing in the measure modifies current ski safety statutes
- Applies the measure to waivers executed at any time for claims that arise on or after the measure’s effective date

ISSUES DISCUSSED:

- Workgroup efforts
- Insurance coverage
- Policy intent of the measure

EFFECT OF AMENDMENT:

The amendment broadens the scope of claims that can be released to those arising out of the activity and permits waivers for minors as well as adults. It removes some exceptions and narrows most others, and it adds exceptions

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for claims relating to the abuse of children and adults and for negligent safety-related training.

Detailed Summary:

- Adds environmental restoration and maintenance to the definition of sport, fitness, or recreational activities
- Allows releases for claims that “arise out of” the sport, fitness, recreational activity, or volunteering to maintain facilities or places used for the activity
- Requires a clear and unambiguous written release that discloses risks associated with the activity
- Narrows the exception regarding equipment to maintenance or inspection of safety equipment supplied by the operator and used in connection with the activity or volunteering
- Limits the exception for negligent hiring, training, credentialing, supervision, or retention claims to employees or agents of the operators, and where the conduct that causes the injury constitutes gross negligence, reckless conduct, willful misconduct, or an intentional tort
- Adds exceptions for claims relating to the following:
 - Negligent safety-related training of the operator’s employee or agent
 - Abuse of children and claims relating to physical abuse or sexual assault of adults
- Eliminates exceptions for claims relating to the following:
 - Failure to warn of known hazards that are not inherent risks
 - Violations of industry safety standards
- Narrows the exception for vehicles by removing motorized conveyances
- Makes the determination of whether a risk is inherent to the activity a question of law for the court
- Clarifies that nothing in the measure modifies current ski safety statutes
- Applies the measure to waivers executed at any time for claims that arise on or after the measure’s effective date
- Allows nonconforming releases to be construed as enforceable within the measure’s requirements

BACKGROUND:

For cases that involve negligence claims and premises liability, juries in Oregon are generally instructed on the following, though courts may add to or tailor instruction as needed:

- To succeed in a negligence claim, a plaintiff must prove that the defendant’s conduct was negligent, the conduct was a cause of harm to the plaintiff, and the harm was reasonably foreseeable.
- A possessor of land has a duty to make the premises safe for people who visit at the possessor’s express or implied invitation and who provide economic interest with their presence. The possessor must exercise reasonable care to discover any condition that creates an unreasonable risk of harm to the visitor (invitee), and either eliminate the condition or warn any foreseeable invitee of the risk so the invitee can avoid the harm.
- The invitee also has a duty to exercise reasonable care to avoid harm from a condition on the premises of which the invitee knows or, in the exercise of reasonable care, should know (see Oregon Uniform Civil Jury Instructions 20.01, 46.08-46.10).

Negligence claims are “common law” claims that predate Oregon statehood and have been honed by the courts over many years. The common law of contracts also predates statehood, and Oregon jurisprudence recognizing the courts’ authority to refuse to enforce unconscionable contracts dates to at least 1886. Procedural unconscionability factors include oppression and surprise, while substantive unconscionability turns on whether the contract’s terms contravene public interest or public policy.

In the *Bagley v. Mt. Bachelor* case, the Oregon Supreme Court weighed factors for and against enforcement and unconscionability of a ski resort’s anticipatory release waiving negligence claims for a snowboarder injured while executing a jump in a terrain park the resort constructed (see 356 Or. 543 (2014)). The court found that supporting procedural factors included disparity in bargaining power between the parties and that the release was take-it-or-leave-it. It reviewed substantive unconscionability through the lens of businesses’ heightened duty of care toward paying patrons (invitees) on their premises. It found that enforcing the waiver would create a harsh and inequitable result because defendant was in a better position than invitees to “guard against the risk of

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harm to its patrons arising from its own negligence in designing, creating, and maintaining its runs, slopes, jumps, and other facilities” and the resort had a “superior ability to absorb and spread the costs associated with insuring against those risks.” The court also concluded that performance of the resort’s duties under premises liability law affected the public interest. Finally, the court found that public policy favors deterrence of negligent conduct, reasoning that ski area operators would lack a legal incentive to avoid creating unreasonable risks of harm without potential exposure to liability.