

Testimony before Senate Judiciary Committee
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In Opposition to SB 341
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The Oregon Trial Lawyers Association opposes the introduced version of SB 341. The bill as drafted infringes on the rights of customers of agritourism facilities, and reduces incentive for the operators of these facilities to maximize safe practices.

The blanket immunity from personal responsibility on the part of the operators is a serious flaw in the bill. For example, the definition of inherent risks of agritourism includes on page 1 lines 14-15 “ordinary dangers of structures and equipment.”

Farm buildings do not have to meet building code. In several of the workgroup meetings held in late 2014, this issue was discussed. SB 341 would not allow the family of an injured child to have their day in court if an injury was caused by the condition of a dangerous building.

In the workgroup meetings, public health concerns were raised as well. It is unclear if the “dangerous condition of land, vegetation, and waters” would allow families to recover damages from an e-coli outbreak at a “you-pick” berry patch.

The bill as written would also make it very difficult to protect visitors from the unsafe operation of a hay wagon or other vehicle that was not primarily intended to carry passengers, yet was used in that capacity.

Most discouraging of all, the insurance industry representative reported that since the agritourism industry is inherently dangerous, and since the industry is nationally rated by insurance companies, no action by the Oregon legislature would lower rates. Proponents report that immunity statutes are on the book in 22 states. The existence of widespread immunity has not lowered rates to the point where it has helped Oregon operators.

SB 341 would discourage the search for safer practices. Immunity removes a key incentive for research and development of methods and products that better protect the public’s safety and health.

Creation of a statutory immunity such as SB 341 is the single most draconian step the Legislature can take to address a liability issue. Immunity shields negligent conduct. Putting immunity into statutes shields provides special privileges to escape responsibility for negligent conduct.

Facts should matter. The immunity provided in SB 341 utterly ignores the facts and circumstances of improper or unsafe behavior in a particular case. The specific facts of a person’s or corporation’s conduct should matter. Immunity provides blanket protection from any civil action no matter how egregious the conduct.

Immunity undermines the judicial branch as a pillar of democracy. Access to a trial by jury is a fundamental right guaranteed in the 7th Amendment of our constitution. While a judge and jury now determine the relative merits of negligent acts, immunity means no judge could make a ruling on whether a case has merit and should move forward. Moreover, no jury could decide case by case justice on the facts of the case. The case would be entirely closed to any legal action for all time, regardless of the negligent action.

We have been working with proponents of the legislation to find a way forward. We have researched immunity statutes in a variety of states. We have reached agreement with the proponents that the Virginia statute is the best compromise we could find to protect the rights of customers and provide the industry a modicum of immunity. Amendments are being drafted that would mirror the Virginia statute. Depending on the wording of that amendment, a compromise could definitely be reached that would remove our opposition to the bill.