

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

MEASURE: HB 3452 B
CARRIER: Sen. Prozanski

Fiscal: No Fiscal Impact

Revenue: No Revenue Impact

Action Date: 06/03/15

Action: Do Pass With Amendments To The A-Eng Bill. (Printed B-Eng.)

Meeting Dates: 05/28, 06/03

Vote:

Yeas: 4 - Burdick, Gelser, Kruse, Prozanski

Nays: 1 - Thatcher

Prepared By: Laura Handzel, Administrator

WHAT THE MEASURE DOES:

Prohibits contracts allowing use of property or facilities by certain groups from requiring individual participant to indemnify property owner for damages not caused by individual participant. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Applications in rural Oregon
- Waivers versus indemnification
- Problems with comprehension and implications of indemnity clauses
- Shifts in liability by indemnification clauses
- Required financial disclosures of contingent liability
- Problems with contracts of adhesion
- Oregon Supreme Court's discussion of limited liability in *Bagley v. Mt. Bachelor, Inc.* (2013)
- Goal of enhancing consumer protection
- Insurance concerns, specifically premium costs
- Exemptions for nonprofit property landowners

EFFECT OF COMMITTEE AMENDMENT:

Clarifies term "educational provider".

BACKGROUND:

To "indemnify" a party is to assume a duty to pay the cost of possible future damage, loss or injury incurred by the party. Contract indemnification clauses are becoming increasingly popular in Oregon. In some instances, the breadth of such indemnification clauses has broadened significantly. Often, individuals signing the contracts do not understand exactly what they are signing, nor do they understand the resulting shift in liability. This is especially problematic when indemnification clauses are used to protect property or facilities used by educational providers or by nonprofit organizations providing services to youths.

House Bill 3452-B prohibits the indemnification by contract of an owner for damages not caused by an individual participant when the owner's property or facility is used by: 1) A public or private elementary or secondary school or an education district; or 2) A nonprofit organization providing services to youths. Contract provisions that fail to comply are void. House Bill 3452-B applies only to contracts entered into on or after the effective date. The bill declares an emergency and is effective on passage.