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Testimony of Arthur Towers
In Opposition to
Senate Bill 1547
Before the
Senate Committee on Health Care
February 7, 2018

Thank you for the opportunity to testify before your committee today. SB 1547 would make it easier for child athletes to return to play after a concussion.

Our members fight for the rights of victims of serious injuries like concussions. We also watchdog the medical industry to ensure that medical protocols are followed. We seek to hold accountable those whose negligence in following protocols results in injury or death. We use the civil justice system as a tool to improve the quality of medical care and procedures in Oregon.

We oppose SB 1547 because it would make it more convenient for children who have suffered a head injury to return to competition. As we learn more about the long-term impact of concussions, and the length of time before symptoms of a concussion manifest themselves, we should error on the side of caution with our children's long-term health.

We know right now that the impact of concussions is more serious for children than for adults. This stems from the fact that children's brains are still developing.

We know right now that symptoms of a concussion may not manifest themselves for several days after the event that sidelined the child athlete.

The understanding of concussions is changing rapidly. The severity of the long-term neurological and cognitive impact of concussions has been understated until recently.

Just in September, researchers from Boston University released a study that showed that playing youth football before the age of 12 impacts long-term brain function. <https://www.nature.com/articles/tp2017197>. Brain development is quite pronounced in boys between the ages of 10 and 12.

Other states are moving in the opposite direction. Legislators in Maryland, Illinois, and New York are considering legislation to ban tackle football for children under 12. There are also proposals to limit heading in youth soccer, and limit head contact in youth lacrosse. According to the latest statistics, 1,230,000 children in America 12 and under play tackle football. At least one youth program has players as young as five.

Three states are considering such legislation this year (Illinois, Maryland, and New York)

<http://www.ilga.gov/legislation/100/HB/10000HB4341.htm>

<https://legiscan.com/MD/text/HB552/2018>

http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01269&term=2017&Summary=Y&Text=Y

The Pressure to Return to Competition is A Reason to Oppose SB 1547

Part of the reason we are here in the first place is that athletes of all ages were being rushed back into competition. In the present culture, there is often pressure from the child-athlete, the coach, and the parents to return the child to competition. {In fact, one of the slides in the CDC concussion training video for medical personnel explicitly says “Do not be pressured!”} **This bill should be killed because it expands the group of people susceptible to that pressure.**

It is easy to envision a scenario comparable to the advent of medical marijuana. Some physicians become known for readily writing prescriptions for medical marijuana and others refuse to. **It is foreseeable that a small group of medical professionals who believe the fear of concussions is overblown will be lenient on granting medical releases for children who have experienced head trauma to return to competition.**

SB 1547 Fails to Hold Negligent Parties Accountable for Hurting Children

We are also appalled by the idea that negligent school districts would not be held responsible if their negligence caused an injury to a child athlete. Under current law (Oregon Tort Claims Act), the most a negligent school district could owe a

student who suffers a lifelong traumatic brain injury would be \$706,000 for a lifetime of medical care and for a reduced quality of life (economic and non-economic damages). That could easily be a fraction of the actual damages. It is foreseeable that the cost of a lifetime of care would revert to the state via Medicaid (OHP).

Under SB 1547, the child's family would have to pay the entire cost and the negligent school district would pay zero.

It would likely be difficult to prove to a jury that a school district's negligence led to a child's traumatic brain injury. SB 1547 precludes the child's family from ever having the chance for their day in court against a school district.

If the immunity for school districts is not removed {Section 1(5), page 2 lines 14-28}, then the committee should contemplate an amendment to create a fund to pay for the long-term care of child athletes who suffer a traumatic brain injury.

SB 1547 Does Not Require Proof of Competency, Just Proof of Course Work

The bill calls for the completion of the on-line course. The bill does not require proof of competency to determine whether or not a child should return to competition. Even if a medical practitioner proved competency at the time of the course, under the terms of SB 1547, they could release children to return to competition based on seven year old information.

Finally, one school of thought is that only M.D.s have the proper training to determine if a child with a head injury should return to competition. If that is the case, then the state should not be expanding this right to other types of health care providers.

The other school of thought is that only medical professionals with specialized, relatively current training should have the power to return a child to competition. If that is the case, Section 3(1) should include MDs.

This Controversial Issue Doesn't Lend Itself to Resolution in the Short Session

SB 1547 proposes a big change in public policy about children's health. This is not the sort of issue properly brought before the legislature in a short session. We urge that at the very least that this bill be shelved until the long session when it can be fully debated. **OTLA urges your no vote on SB 1547.**