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On Behalf Of:  
Committee: Senate Committee On Judiciary  
Measure: SB754

As I understand the law, Ordinary Negligence is a failure to use the level of care and caution that an ordinary person would use in similar circumstances. It often involves a careless mistake or inattention that contributes to or causes an injury. Typically, the responsible party did not intend to cause harm, but a person who suffered harm as a result of the responsible party's inaction or mistake may have legal recourse to recover expenses and damages by asserting ordinary negligence.

A sports equipment rental business that unknowingly provides defective equipment whose use causes or contributes to an injury or accident is an example of ordinary negligence.

Engaging in sporting activity often involves some degree of risk. A skier could injure themselves in a fall, for example, or a kayaker could drown after overturning the kayak. Such accidents are not the fault of the facility operator.

If a skier fell because the slope was littered with debris, the facility operator may have been negligent; if a business renting kayaks issued a defective PFD to a customer and that customer relied on it to keep them afloat after overturning their rented kayak, the business operator may have been negligent.

All businesses have a responsibility to provide a safe workplace, shop or venue. Notwithstanding the risk inherent to certain sports, there is no reason to allow sports-related businesses to require customers sign a release for ordinary negligence when such a waiver is not available to other businesses.

Allowing sports-related businesses to require a liability waiver for ordinary negligence would hold harmless a kayak rental company that unknowingly issued defective PFDs to customers, but a supermarket that failed to place a wet floor sign after mopping up a spill could be liable for ordinary negligence if someone fell because the floor was slippery with soapy water. How is that fair and equitable?

In addition to the above concerns: section 3 of SB 754 states, "This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage."

How does SB 754 address an emergency? The public peace, health and safety are not in need of immediate preservation; this bill's purpose is reducing the liability

exposure of sports businesses by allowing them to require customers to release the operator from claims of ordinary negligence.