

HB 3140 STAFF MEASURE SUMMARY

House Committee On Economic Development, Small Business, and Trade

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/19, 2/24

WHAT THE MEASURE DOES:

The measure enables recreational operators to use liability waivers for claims of ordinary negligence relating to sports, fitness, or recreational activity. Declares an emergency, effective on passage.

Detailed Summary:

Recreational liability:

Allows recreational operators to require liability waivers for people 18 years or older releasing them from claims of ordinary negligence relating to sports, fitness, or recreational activity. Allows waivers to be required before a person participates in the activity, rents equipment, uses a facility, or volunteers. States that such releases are not unconscionable or void as contrary to public policy. Restricts operators from requiring a release from claims that constitute greater than ordinary negligence. Applies to releases executed before, on, or after the measure goes into effect. Does not apply to releases for claims on which no appeals have been filed and the time to appeal has expired before the effective date. Defines terms.

Climate change study:

Requires Oregon Business Development Department (OBDD) to study climate change issues facing the recreation industry and providers. Requires the Department of Consumer and Business Services (DCBS) to assist with research on climate change, specifically on how changes to insurance impact the recreation industry. Appropriates \$100,000 for the study. Repeals this section on January 2, 2027.

Declares an emergency, effective on passage.

Fiscal impact issued.

Revenue impact issued.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

The Oregon Supreme Court ruled in [Bagley v. Mt. Bachelor, Inc.](#) (2014) that businesses may be sued for negligence even when someone engaging in sports or recreation has signed a waiver. The decision found that the waiver was an “unconscionable contract,” meaning that it was unenforceable. Since then, additional lawsuits have been filed against recreational operators in situations where someone has signed a waiver and has then been injured while engaging in sports and recreation.

House Bill 3140 enables the use of liability waivers for claims of ordinary negligence relating to sports, fitness, or recreational activity. The measure clarifies when these types of businesses are and are not legally responsible for

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claims relating to sports, fitness, or recreational activity. The measure allows liability waivers releasing operators from claims of ordinary negligence, which is defined as failing to act with the care that a reasonable person would use in similar circumstances. It would not allow waivers releasing business operators from claims that constitute greater than ordinary negligence, which typically refer to a more serious level of carelessness involving reckless disregard for the safety of others. Therefore, businesses would remain accountable for behavior that is reckless or deliberate.