NO ON HB 3140

PROTECT OREGON CONSUMERS FROM HARM:
NO FREE PASSES FOR CORPORATE NEGLIGENCE THAT INJURES OREGONIANS

What would HB 3140 do?

HB 3140 overturns a decision by the Oregon Supreme Court regarding 'liability waivers'. In 2014, the Oregon Supreme Court ruled in favor of survivors over corporations who harmed them. Now, corporations are asking the legislature to remove these protections for consumers so they can't be held responsible for their negligence.

By forcing paying customers to waive their fundamental right to a jury trial to hold wrongdoers accountable for the harm they caused, HB 3140 would be devastating for Oregonians who are injured when corporations don't ensure the safety of their customers.

Most customers have no idea they have signed away their rights because it is part of purchasing a lift ticket or in the fine print on the entrance ticket for the activity. This is their fourth attempt to limit the rights of consumers and so far, the Oregon Legislature has chosen to side with consumer and the Courts to protect survivors.

The Oregon Supreme Court ruled in the *2014 Bagley v. Mt. Bachelor* decision that liability waivers are "unconscionable, unenforceable and unconstitutional".

How would this harm Oregonians?

The impacts of this bill would be far-reaching and dangerous.
HB 3140 would limit protections for consumers who engage in "Sports, fitness or recreational activity" including but not limited to hunting, fishing, swimming, boating, rafting, biking, camping, skiing, snowboarding, winter sports, team and individual sports, climbing, equestrian, rodeo activities, hiking, outfitter guiding, ocean and water sports, motorized recreation, athletic or fitness competitions or fitness and training activities.

Example 1	A skier walking in the ski resort parking lot was hit from behind by a snowplow and seriously injured when the driver reversed and ran her over a second time. She would be barred from seeking justice because HB 2140 Sec 1(2) broadly defines the activity to include "use of a facility or place." Walking in the parking lot has nothing to do with skiing, yet the resort would get a free pass from the negligence of the snow plow driver.
Example 2	A Salem ropes course employee failed to check the equipment and clip a woman's harness to the guide ropes to safely secure her to the 5 story Tarzan swing. She fell straight down 50 ft and shattered her ankle and spine.

This would also include instances of sexual abuse and assault when corporations are negligent with their staffing and hiring.

Example 3:

A young woman was groomed as a teenager by her tennis coach at an elite athletic club in Portland and was sexually assaulted into adulthood.

Because the assaults took place in a sporting facility, she would have no way to seek justice from the club who negligently employed her abuser.

What do negligence and inherent risk mean?

Not every injured person is injured due to negligence. The mere fact that an accident or injury occurred is not sufficient by itself to prove "negligence." In order to win, a plaintiff must prove that: (1) the defendant's conduct was negligent; (2) the defendant's negligent conduct was a cause of harm to the plaintiff; and (3) the harm was reasonably foreseeable. But every injured person due to negligence deserves the right to tell their story to a jury and let them decide based on the facts of the case.

Inherent risk is still a factor when determining responsibility. Nothing in the Bagley Supreme Court decision changes that. Many outdoor activities have dangers associated with them. We all know those activities are inherently risky. Paying customers need to access their own limitations and act accordingly. In some instances, the injury is the fault of the recreator doing things beyond their skill level or being careless. Skiers crash. Mountain bikers can hit rocks or ride too fast into a turn. Those are examples of inherent risk and do not constitute negligence by the business. In 1979, the legislature passed an industry-backed law regarding inherent risk and this still remains.

What about the cost of litigation? Won't this cause people to go out of business?

Ski resorts testified before the 2015 Legislature (Senate Judiciary Committee (SB 863)) stating they would go out of business if they were held accountable when their corporate negligence caused an injury or death. **10 years later, the industry is alive and well** (Mt Bachelor is for sale—asking price is $220 Million) and victims have been able to have their day in court.

HB 3140 would give no incentive for corporations to do the right thing. It gives the same protections to Oregon businesses who go the extra mile to keep their customers safe as the facilities who cut corners and don't follow safety protocols.

Most Oregon businesses play by the rules and prioritize safety, put money, resources and training to make sure they are following safety standards and employees are properly trained. This legislation would create an incentive for companies to NOT INVEST in safety features, training for staff and maintenance of equipment (all of which costs money) because there would be **no accountability if their failure to do so caused serious injury or death to a customer.**

For further information, please reach out to Jonathan Manton at manton@sawneeservices.org