



Where Outfitters *Thrive*

February 20, 2025

House Committee on Economic Development, Small Business, and Trade
Oregon State Capitol, 900 Court Street NE
Room 453
Salem, Oregon 97301

Re: In Support of HB 3140 to Meet National Industry Standards on the Use of Exculpatory Agreements

Chair Nguyen and Members of the Committee:

America Outdoors supports HB 3140, a good and critical bill that the Oregon legislature should pass with all due haste. Failing to do so will leave Oregon's outdoor recreation vulnerable to potentially serious consequences. In its passage of the EXPLORE Act late last year, U.S. congress acknowledged the permissibility of liability waivers. Similarly, in its release of a memorandum last week, the National Park Service joined other federal land management agencies to allow for the use of a liability waiver for simple negligence. The arguments for these federal statutory and policy changes are informative to consideration of HB 3140 and worth consideration.

Failing to pass HB 3140 will push outdoor recreation activities into neighboring states. New outdoor operators seeking a favorable business climate will prefer to incorporate in states that allow for the use of liability waivers, and avoid states where they have reduced protection from frivolous lawsuits, including every state bordering Oregon. Without the assurances granted by this bill, in-state outdoor recreation providers will remain at a competitive disadvantage to their competitors, as they will be unable to negotiate more favorable insurance agreements. For many insurance providers, a policy employing the use of a liability waiver is prerequisite to obtaining a plan. In unfavorable insurance markets, outfitters who are prevented from using liability waivers may not be able to find coverage at all.

US Congress recognized this reality when they passed the EXPLORE Act in December 2024, forbidding federal land management agencies from implementing, administering, or enforcing "any regulation, guidance, or policy prohibiting the use of an exculpatory agreement between a recreation provider... and a customer." (Public Law No. 118-234, Sec. 319(c)) for all Special Recreation Permit holders.

Similarly, the National Park Services recently reversed its 40-year ban on exculpatory agreements. Recognizing that "the NPS's prohibition on [exculpatory agreements] is inconsistent with industry practice and policies and practices of other Federal agencies," and that the prohibition "can impact liability insurance cost and availability," the NPS revised its existing policy for commercial recreation providers in a February 10, 2025 memorandum. According to the memo:

"This revised policy allows all [Commercial Use Authorization] holders, regardless of the level of risk associated with the authorized service, and concessioners and commercial lessees

providing high-risk recreation services (as determined by the NPS) to ask their customers to sign an exculpatory agreement in the form of a visitor acknowledgement (i.e., assumption) of risk (VAR), waiver of liability (WoL), and indemnification for injuries resulting from the commercial service operator's simple (i.e. ordinary) negligence." [US DOI Memorandum 2-10-2025; Subject: Exculpatory Agreements for Commercial Use Authorizations, Concession Contracts and Leases.]

As the NPS prioritizes the use and enjoyment of visitors to national parks, their tolerance for the use of liability waivers by commercial recreation providers is significant.

To effectively support it's world-class outdoor recreation industry and to stay in step with the national industry standards, America Outdoors Association recommends the aswift passage and adoption of H.B. 3140. Thank you for your careful consideration of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Bannon". The signature is fluid and cursive, with a prominent initial "A" and "B".

Aaron Bannon
Executive Director
America Outdoors Association