

SB 1517 A STAFF MEASURE SUMMARY

Carrier: Sen. Broadman, Sen. Prozanski

Senate Committee On Judiciary

Action Date: 02/16/26
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 5-1-0-0
Yeas: 5 - Broadman, Gelser Blouin, Manning Jr, McLane, Prozanski
Nays: 1 - Thatcher
Fiscal: Has minimal fiscal impact
Revenue: Has minimal revenue impact
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Meeting Dates: 2/4, 2/16, 2/16

WHAT THE MEASURE DOES:

The measure allows recreation operators to require a liability release from patrons for ordinary negligence for injuries sustained during the act of performing a sport, fitness, or recreational activity. The measure declares an emergency, effective on its passage.

Detailed Summary:

- Defines “operator” to include people who offer the opportunity to participate in a sport, fitness, or recreational activity, or who provide a facility or place for the activity
- Defines “sport, fitness, or recreational activity” to include indoor or outdoor activities involving elements of inherent risk, and gives examples
- Lists claims that cannot be waived with a liability release, including claims for greater than ordinary negligence and claims relating to the following:
 - Injuries not sustained during the act of performing the activity
 - Failure to warn of known hazards that are not inherent risks
 - Negligent hiring and supervision
 - Violations of statute, administrative rule, or industry safety standards
 - Equipment or safety gear that the operator designed, manufactured, provided, maintained, or inspected
 - Vehicle operation, maintenance, or use, unless the participant uses the vehicle as part of the activity
- Conditions the enforceability of releases on the following:
 - The participant, or their parent or guardian, voluntarily signs the release
 - The release is conspicuous and in writing
 - The release discloses the risks associated with the sport, fitness, or recreational activity
 - The release waives the operator’s liability for damages for injuries resulting from those activities

ISSUES DISCUSSED:

- State policy options to provide insurance for recreation businesses
- Legislator workgroup
- The *Bagley v. Mt. Bachelor* case

EFFECT OF AMENDMENT:

The amendment replaces the measure and allows recreation operators to require a liability release from patrons for ordinary negligence for injuries sustained during the act of performing a sport, fitness, or recreational activity.

BACKGROUND:

For cases that involve negligence claims and premises liability, juries in Oregon are currently instructed on the following:

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- To succeed in a negligence claim, a plaintiff must prove that the defendant's conduct was negligent, the defendant's negligent conduct was a cause of harm to the plaintiff, and the harm was reasonably foreseeable.
- A possessor of land has a duty to make the premises safe for people who visit at the possessor's express or implied invitation and who provide economic interest with their presence. The possessor must exercise reasonable care to discover any condition that creates an unreasonable risk of harm to the invitee and either eliminate the condition or warn any foreseeable invitee of the risk so the invitee can avoid the harm.
- The visitor (invitee) also has a duty to exercise reasonable care to avoid harm from a condition on the premises of which the invitee knows or, in the exercise of reasonable care, should know (see Oregon Uniform Civil Jury Instructions 20.01,46.08-46.10).

Negligence claims are "common law" claims that predate Oregon statehood and have been honed by the courts over many years. The common law of contracts also predates statehood, and Oregon jurisprudence recognizing the courts' authority to refuse to enforce unconscionable contracts dates to at least 1886. Procedural unconscionability factors include oppression and surprise, while substantive unconscionability turns on whether the contract's terms contravene public interest or public policy.

In the *Bagley v. Mt. Bachelor* case, the Oregon Supreme Court weighed factors for and against enforcement and unconscionability of a ski resort's anticipatory release waiving negligence claims for a snowboarder injured while executing a jump in a terrain park the resort constructed. The court found that supporting procedural factors included disparity in bargaining power between the parties and that the release was take-it-or-leave-it. It reviewed substantive unconscionability through the lens of businesses' heightened duty of care toward paying patrons (invitees) on their premises. It found that enforcing the waiver would create a harsh and inequitable result because defendant was in a better position than invitees to "guard against the risk of harm to its patrons arising from its own negligence in designing, creating, and maintaining its runs, slopes, jumps, and other facilities" and the resort had a "superior ability to absorb and spread the costs associated with insuring against those risks." The court also concluded that performance of the resort's duties under premises liability law affected the public interest. Finally, the court found that public policy favors deterrence of negligent conduct, reasoning that ski area operators would lack a legal incentive to avoid creating unreasonable risks of harm without potential exposure to liability.