



February 15, 2023

Senate Committee on Judiciary
900 Court Street NE
Salem, Oregon 97301

Re: Support for SB 754 Liability Waivers

Dear Chairman Prozanski, Vice Chair Thatcher and Committee Members:

On behalf of the Oregon Health and Fitness Alliance (“OHFA”), I offer our organization’s support for SB 754. Oregon should realign with the other Western states and recognize liability waivers for operations which foster inherently risky activities that, by their nature, are often the cause of participant injuries.

OHFA represents a broad spectrum of 460 health clubs, gyms and studios that provide essential support for Oregonians who desire to recreate and be physically fit. About 700,000 Oregonians exercise in our clubs. Most of our members are family-owned small businesses – owned by people who have a passion to help others live healthy lives. During the pandemic, OHFA members were repeatedly forced to close operations. These mandated closures were more than many clubs could handle, and we lost about 1/3 of these Oregon small businesses and the support services they provide to their communities.

SB 754 addresses a complex problem that has plagued our industry in Oregon since the 2014 *Bagley v. Mt Bachelor* decision. Since 2014, health club comprehensive general liability insurance premiums in Oregon have sharply risen, causing clubs to either close or pass along these costs to their patrons. Clubs in Washington and California, for example, can use and enforce these waivers, and their insurance policies are priced accordingly. SB 754 is designed to put Oregon back in sync with other Western states, protecting consumers from a business’s reckless disregard or willful misconduct for a person’s safety, but reasonably balancing the risk in cases of ordinary negligence because of the inherently risky nature of the consumer’s activity.

It is worthy to note that liability waivers are used universally in our industry throughout the U.S. Consumers understand and accept that when they participate in sporting activities, strenuous personal training or group exercise, they are voluntarily participating in an activity that brings them enjoyment, more energy or better health. They also understand that there are some inherent risks in these activities, risks that they are willing to accept in return for the personal benefits they receive. As you know, the Assumption of the Risk Doctrine was

abolished in Oregon. Therefore, as the law now exists, Oregon's health clubs bear a disproportionate amount of risk. The only way to mitigate that risk is to purchase expensive insurance and pass that cost along to consumers. Especially during these times of high inflation, anything we can do to lower consumer costs would be a great benefit to Oregonians.

Our Oregon clubs care greatly for our members and take extraordinary precautions to make certain that our facilities are safe, enjoyable and healthy places to visit. For example, during the pandemic, nearly all Oregon clubs adopted hospital-grade cleaning and disinfecting protocols. Advanced air scrubbing systems were installed, social distancing practices were observed, and in most clubs every conceivable precaution was implemented to ensure the safety and health of our patrons.

Finally, we have been asked "how many Oregon clubs have implemented a split pricing model in response to the implication contained in footnote 21 of the *Bagley* decision?" The answer is "NONE" to our knowledge. The reason is simple. Asking some patrons to pay one price and others to pay another price, based on signing a waiver or not, begs a series of consumer questions that cannot be answered simply or quickly. Oregon clubs do not have in-house lawyers positioned at their reception desks to explain footnote 21 of the *Bagley* decision, nor could other non-legal staff possibly explain the nuances of negligence law. In theory, split pricing could conceivably make sense from a contract law perspective but in practice, it is impossible to implement in our fast-paced industry.

SB 754 will put Oregon gyms, health clubs and studios back onto a similar liability footing as our California and Washington counterparts. We respectfully request that you vote in favor of SB 754. If Committee members have any questions about OHFA's position or why this bill is so important, we will be pleased to respond to those questions at the hearing.

Sincerely,

Jim Zupancic

Jim Zupancic
President

Cc: OHFA Board of Directors