MEMORANDUM

To: Chairman Prozanski, Vice-Chair Thatcher, and Members of the Senate Judiciary Committee

From: Oregon Health & Fitness Alliance, Jim Zupancic, President and General Counsel

Re: **OPPOSITION TO SB 1517**

Date: February 3, 2026

The more than 350 Oregon fitness clubs, gyms and exercise studios comprising the Oregon Health & Fitness Alliance ("**OHFA**"), with due respect for the Chair of this Committee, forcefully, unequivocally and unconditionally **OPPOSE SB 1517 in the strongest possible terms**. This bill will cause harm to small family-owned businesses, further damage Oregon's unfavorable business climate and create an even more litigious environment than currently exists. **SB 1517 creates a poorly conceived and unworkable framework that is bad for the ski industry and even worse for non-ski businesses that offer inherently risky activities.**

By contrast, OHFA strongly endorses and supports SB 1593 (ORCA), which takes a balanced sensible approach to restoring waivers, and aligns Oregon's policy more closely with the other western states.

As OHFA's President and General Counsel, I speak with more than 46 years of extensive law practice experience, including in western state, federal and appellate courts. I have served as Minority General Counsel to the California Assembly Ways and Means Committee, opining on hundreds of complex legislative bills, and am currently an adjunct professor at the University of San Diego School of Law. This bill is poorly framed, invites legal challenge and it irrationally discriminates against non-ski recreation providers. To my knowledge, no other U.S. state takes this ski vs. non-ski approach to address this issue.

1. **SB 1517 discriminates between ski and non-ski recreation providers, without any rational basis**. By design, this bill expressly applies to only ski area waivers. Yet, this bill addresses an Oregon public policy conundrum that negatively impacts many recreational providers far beyond ski areas. As articulated by OHFA, the Oregon Outfitters and Guides Association and a myriad of other providers, it is an indisputable fact that this public policy issue impacts all who provide a recreational activity that includes inherently risky activities.

By discriminating against non-ski providers, the Legislature is choosing among those businesses that will be protected by this law and those that will not. Yes, it is true that the ski industry has been decimated by the erosion of available liability insurance carriers and the skyrocketing premiums. However, OHFA small businesses, along with trail and fishing guides, river guides, rock climbing gyms, expedition leaders, Cycle Oregon and Hood-to-Coast are all subject to the same flawed public policy that SB 1517 purports to address. It is not a question of whether the *Bagley* public policy pronouncement harms all recreational businesses and events, it is only a question of degree. And it is reasonable to assume that the negative impact upon small businesses is even greater than on many corporate ski areas, making discrimination against small businesses even less logical because it hurts the vulnerable the most.

For example, SB 1517 allows for waiver efficacy against liability arising out of injuries sustained while using a beginner ski bunny hill, while it expressly prohibits the same protection for a recreation provider that leads a mountain climbing expedition on Mt. Hood. Likewise, it prohibits waivers for use of a powerful cardio treadmill that can speed up to 12 mph, while it allows waivers for injuries to a skier who is stationary, resting or waiting for a friend on the slopes, and is hit by an out-of-control downhill skier. Trail guides cannot obtain liability waivers, under SB 1517, when they are guiding groups over uneven, rocky terrain and near potentially dangerous cliffs, but ski areas could get waiver protection for injuries resulting from running into a ski lift support structure that can be seen by snowboarders a mile away. Summertime river rafting guides cannot obtain waiver protection under SB 1517, but those same professionals will receive protection when they become ski instructors in the winter. This makes no rational sense. I could offer another hundred nonsensical comparisons. There is no rational basis for discriminating against a group of recreation providers only because they are not offering ski-related activities.

I understand some may believe that discriminating between outdoor and indoor recreation offers an alternative safe harbor. This is not true. Some of our members offer indoor swimming pool recreation and outdoor pools at the same facility. Why is an outdoor pool recreation more inherently dangerous than indoor pool recreation? Likewise, cross training outdoors in a paved or grassy area is no riskier than doing the same in an indoor facility. The outdoor/indoor discrimination is no more legally palatable than the ski/non-ski discrimination. Again, I could cite scores of examples of how the outdoor/indoor approach is only a distinction without a difference.

The rational basis test, emanating from the Due Process and Equal Protection clauses of the 5th and 14th Amendments to the U.S. Constitution, requires that a law burdening a

business's economic rights be "rationally related to a legitimate state interest" to be constitutional. *City of Cleburne* , 473 U.S. at 440. A law fails under this constitutional test when the "logical connection between its means and ends are too attenuated" to be rational, or (2) when the end itself is illegitimate. *See Hooper v. Burnalillo County Assessor,* 472 U.S. 612, 623 (1985) (no legitimate interest in dividing state residents into different classes).

Here, SB 1517 expressly prohibits liability waivers for non-ski recreational providers. It makes an arbitrary distinction based on the location and type of activity, specifically skiing, without considering the actual physical risks involved. Eventually, this bill would be subject to judicial review and would test the rational basis of this discrimination.

2. **SB 1517 worsens Oregon's business climate by offering a non-solution to Oregon's liability crisis.** Given the Governor's Prosperity Roadmap and the drive to increase Oregon's GDP and support for businesses, the timing of SB 1517 could not be worse. Contrary to the Governor's vision, this bill sends a counter-business message that will help cement Oregon's lead among the most business-unfriendly states in the nation.

   Numerous witnesses from the insurance industry have previously testified in public hearings on this subject that a clear and simple policy realignment is what's needed to bring insurers back to Oregon and reverse the trend of skyrocketing premiums. The approach offered by SB 1517 is a non-solution to this problem. No insurer could possibly interpret the convoluted scheme designed in SB 1517 to be a clear and simple realignment of public policy. On the contrary, it will be seen as a disingenuous attempt to offer liability waivers to ski areas only in a very narrow context and then whittle away that permission with exceptions that are so broad that they eviscerate the original permission. It is a common ploy to purport to make a law, then add so many exceptions, that the exceptions devour the original law. SB 1517 is a textbook example of this ploy.

   OHFA stands firmly with our ski colleagues in strong opposition to SB 1517, and we offer SB 1593 (ORCA) as a commonsense alternative. The Protect Oregon Recreation coalition is comprised of an extraordinarily diverse group of chambers of commerce, environmental groups, indoor and outdoor recreation providers, public interest groups and of course, ski area operators, who all join in opposition to SB 1517. To ignore this unified and cohesive coalition would be to deny the obvious – that SB 1517 would be bad for Oregon and is economically regressive, at a time when the Governor is attempting to prioritize her Prosperity Roadmap.

3. **SB 1517's framework is flawed and would invite legal challenges, further burdening our overloaded courts.** Oregon Article 1, Section 21 of the Oregon Constitution, which mirrors Article 1, Section 10 of the U.S. Constitution, prohibits the Oregon Legislature from enacting a law that impairs obligations of contracts. The Oregon Constitution provides:

> *No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution …(Article 1, Section 21)*

Some of our members have carefully constructed liability waivers that they believe may be enforceable. SB 1517 expressly defeats these contracts, and in so doing, impairs the obligations under those contracts. These contracts may have been purposely negotiated, are completely fair and clearly understood by both the participant and the provider. Yet, SB 1517 would nullify these contracts *ab initio* without any rational basis or explanation why they should be so nullified.

Moreover, below is a partial list of some of SB 1517's intrinsic ambiguities that will clog our trial and appellate courts with legal challenges:

- What is the definition of "adjoining skiable terrain" under Section 1 (8)?
- What are injuries sustained "involving" a chair lift under Section 3 (2) C?
- Is a person pausing or resting on a ski slope in the "act of skiing" under Section 3?
- What is the economic analysis behind restricting lift premiums to 10% for choosing not to enter into a waiver?
- What are "hazards" under Section 4?
- What is "ordinary visibility" under Section 4?
- Where is the "public policy of this state disfavoring preinjury releases of negligence" articulated in Oregon statutes? (Section 3 (5))
- If Oregon ski areas need to improve all their facilities to "industry best practice" standards or be found negligent under Section 4, how is it possible to meet this standard when those "best practices" are constantly evolving?

For the reasons stated above, and those that will be presented at the public hearing on SB 1517, OHFA opposes this legislation and respectfully requests that you join in that opposition.

Respectfully submitted for the record.