

February 17, 2026

Senate Judiciary Committee – RE: SB 1517-7 and SB 1593-1

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

Thank you for the thought, time, and care you are devoting to the difficult questions raised by SB 1517-7 and SB 1593-1. I also want to acknowledge the Oregon Trial Lawyers Association (OTLA) and for the important work its members do representing Oregonians who have suffered serious harms. Their testimony underscores real tragedies that can result from negligence in recreation settings and the need to preserve meaningful remedies when operators fail to exercise due care.

At the same time, I respectfully disagree with OTLA’s characterization of SB 1593 and HB 4071 as “reckless and irresponsible,” and with the suggestion that this has been a “one-sided conversation.” **SB 1593-1, especially as amended, is a cautious and responsible attempt to do what every other western state has already done: enforce clearly written waivers for ordinary negligence in sport, fitness, and recreational activities, while preserving claims for gross negligence, recklessness, willful misconduct, and statutory violations.** Western states that follow this approach are not viewed as having abandoned their constitutions; instead, courts there routinely harmonize enforceable waivers with state constitutional rights of access to the courts and to a remedy.

SB 1517-7, as now amended, further demonstrates that this is not a “one-sided conversation.” It incorporates careful definitions, detailed carve-outs where waivers cannot apply, and an explicit acknowledgment of *Bagley v. Mt. Bachelor* and the continuing role of unconscionability doctrine in limiting releases. SB 1593-1, referenced in OTLA’s testimony, similarly preserves claims above ordinary negligence and contains a severability rule ensuring that any overbroad language in a form is read down rather than used to invalidate waivers entirely. Both bills expressly continue to respect Oregonians’ constitutional right to seek justice for truly wrongful conduct.

Below I address, respectfully and directly, the three specific changes OTLA has requested.

1. OTLA Point 1: “Risks created by the operator” should never be subject to waiver

OTLA proposes that “waivers could not be enforced for claims resulting from risks created by the recreational operator.” In practice, almost any negligence claim arises from a “risk created by” an operator—by how they design programs, maintain premises, train staff, or set up equipment. If this phrase were added without limitation, it would swallow the very core of what SB 1517-7 and SB 1593-1 are designed to address: ordinary negligence risk inherent in operating recreation businesses.

Legally, this proposal is too broad for at least three reasons:

1. **Ordinary vs. gross negligence is already the key line.**

SB 1593-5, for example, already prohibits waivers of “any claim for a willful or wanton act or omission, a reckless act or omission or a grossly negligent act or omission,” meaning that egregious operator-created risks remain fully actionable. Western states that enforce waivers follow this same structure: they treat ordinary negligence (including many “operator-created” risks) as waivable by adults but uniformly preserve claims for gross negligence and worse.

2. **The phrase “risks created by the operator” collapses the distinction.**

If any risk that originates in an operator’s conduct is categorically non-waivable, then ordinary negligence becomes effectively non-waivable, because negligence itself is almost always about risks emanating from the defendant’s conduct. That approach would put Oregon back out of step with every western state and would make SB 1517-7 and SB 1593-1 largely ineffective in stabilizing the insurance market and preserving access to many activities.

3. **Existing doctrinal tools already protect consumers from overreach.**

Even with waivers, Oregon courts would retain unconscionability doctrine (*Bagley*), general contract defenses, statutory safety requirements, and the preserved causes of action for gross negligence and statutory violations. Those are the same tools courts in other western states use to police truly unreasonable operator-created risks while still enforcing ordinary-negligence waivers.

For these reasons, I urge the Committee not to adopt an open-ended “risks created by the operator” exception. It is more precise, and more consistent with other western states, to:

- Continue to allow waivers for ordinary negligence;
- Preserve claims for gross negligence, recklessness, and intentional or willful misconduct; and
- Preserve claims based on violations of safety statutes or regulations, as SB 1517-7 already does in its carve-outs.

This strikes a balance: operators remain accountable for serious and regulatory violations, but they can manage insurable, ordinary-risk exposures through clearly disclosed waivers as their counterparts do in neighboring states.

2. **OTLA Point 2: Limit coverage to outdoor recreation only**

OTLA also asks that “the amendment and bill would need to be limited to outdoor recreation only.”

This is out of step with both the text and the policy rationale of SB 1593 and SB 1517-7, and with how other western states handle waivers:

- SB 1593-1 and SB 1517-7 both recognize that “sport, fitness or recreational activity” includes indoor and outdoor activities, such as gyms, climbing walls, fitness classes, and trampoline parks, not just rafting or skiing.
- The underlying policy question—whether a competent adult, after adequate disclosure, may waive an operator’s liability for ordinary negligence in an inherently risky activity—does not turn on whether the roof is open or closed. Indoor rock climbing can be as risky as outdoor canyoneering; a poorly-landed flip in a trampoline park can be as serious as a fall on a ski slope.

From a legal perspective, limiting enforceable waivers to outdoor recreation only would:

1. Create arbitrary lines: An indoor climbing wall and an outdoor via ferrata would be treated fundamentally differently, even if the risks and waiver language were functionally identical.
2. Disadvantage indoor recreation providers (many of whom are small businesses and nonprofits) relative to equivalent providers in every other western state, where waivers are commonly used and enforced for both indoor and outdoor recreational and fitness settings. SB-1593-5-Amendments.
3. Undercut the core legislative findings in SB 1593 regarding the importance of the entire “recreation and health and fitness industries”—not just outdoor tourism—for Oregon’s economy and public health.

Courts and statutes in western states generally focus on the **content and presentation** of the waiver (clarity, conspicuousness, and scope) and on preserving claims above ordinary negligence, not on whether the activity is under a roof. **Oregon can adopt that same evenhanded, constitutionally respectful approach without drawing an indoor/outdoor line that has little to do with risk or fairness.**

3. OTLA Point 3: Parents or guardians should not be able to sign for minors

Finally, OTLA urges that “the amendment and bill would need to make clear that a parent or legal guardian could not waive the constitutional rights of their minor child.” The concern for minors’ rights is important, but a categorical bar on any parental signing is neither necessary nor consistent with how other states handle youth participation in inherently risky activities.

In practice, if parents and guardians cannot sign waivers on behalf of minors:

- **Many outdoor and indoor programs** (from ski schools and rafting trips to youth sports, summer camps, climbing gyms, and after-school fitness programs) **could be forced either to stop serving minors or to face uninsurable exposure in Oregon while similar operators in neighboring states continue to function under enforceable parent-signed waivers.**
- **Families who want their children to experience these activities will be deprived of opportunities or face higher costs and reduced access** because providers cannot obtain insurance at sustainable rates without some ability to manage ordinary-negligence risk for minors.

Other western states that enforce recreation waivers commonly allow parents or guardians to sign on behalf of minors, while still preserving claims for gross negligence, reckless or intentional conduct, and statutory violations, and while applying heightened scrutiny to waiver language involving children. Those states continue to operate under state constitutions that, like Oregon’s, guarantee access to courts and a remedy; courts there have concluded that carefully structured parent-signed waivers are compatible with those guarantees, particularly when the waiver is limited to ordinary negligence and the activity is elective and recreational.

In that light, it is both reasonable and necessary, if Oregon wishes minors to participate in many forms of recreation, to:

- Allow a parent or legal guardian to sign a clearly written, conspicuous waiver releasing ordinary-negligence claims for the child’s participation;
- Preserve the child’s rights as to gross negligence, reckless and intentional acts, and statutory safety violations; and
- Ensure Oregon courts can continue to apply unconscionability and public-policy doctrines to strike down abusive or misleading youth waivers.

This structure respects constitutional rights while recognizing the reality that minors cannot sign for themselves and that parents routinely make binding decisions affecting their children’s activities, schooling, and health.

Why SB 1593-1 is cautious and responsible, not reckless

Contrary to OTLA’s description, **SB 1593-1 and its -5 amendment embody a cautious, mainstream approach:**

- They allow waivers only for **ordinary negligence** in clearly defined “sport, fitness or recreational” contexts;
- They **prohibit waiver** of willful, wanton, reckless, and grossly negligent acts or omissions;

- They state that releases are not unconscionable or void as against public policy simply because they are required as a condition of participation, while leaving *Bagley*'s unconscionability analysis intact for individual cases; and
- They contain a severability/construction rule that narrows overbroad language rather than using it to void waivers wholesale.

That is the same basic framework under which other western states' recreation industries have operated for years, with courts continuing to police egregious conduct and ensure access to remedies for serious wrongdoing. It is difficult to view that pattern—ordinary negligence waivable; gross negligence and statutory violations non-waivable; judicial review preserved—as “reckless.” Rather, it is a measured recognition that inherently risky recreation depends on a balance of responsibility between participants and providers.

Conclusion and request to the Committee

Finally, I acknowledge that OTLA has framed its concerns in terms of preserving Oregonians' constitutional rights and that the Committee has given careful, nuanced attention to these issues. I share the conviction that no statutory change should strip Oregonians of the ability to seek justice when they are harmed by truly wrongful conduct.

At the same time, **I urge the Committee to recognize that:**

- **SB 1593-1, with its amendment, reflects a cautious and responsible structure already familiar in other western states that respect their own constitutional protections; SB-1593-5-Amendments.**
- The dialogue around SB 1517-7 and SB 1593 has not been one-sided: the current text of SB 1517-7 itself shows substantial tailoring, carve-outs, and responsiveness to concerns about negligence and risk; and
- Broad additional carve-outs of “operator-created risks,” categorical exclusion of indoor recreation, and a blanket prohibition on parent-signed waivers for minors would go beyond what other western states do and would significantly undercut the bills' ability to stabilize access to recreation in Oregon law.

For these reasons, I respectfully submit that:

- SB 1593-1, as refined in the -5 amendment, represents the **bare minimum** needed to bring Oregon into line with other western states and to provide all entities—businesses, governments, and nonprofits engaged in outdoor recreation, conservation, and related activities—**with an effective, legally sound tool to manage ordinary risk while maintaining incentives for due care;** and
- If SB 1517-7 cannot be further amended to provide protections at least equivalent to those in SB 1593-1, then it should not be advanced in its current form.

Thank you again for your service and for your careful consideration of these complex issues.

Respectfully submitted,

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