

**SB 1517 A -A8, -A11, -A14, -A15, -A18, -A19, -A20, -A21, -A23**

**STAFF MEASURE SUMMARY**

**House Committee On Rules**

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**Prepared By:** Tisha Pascone

**Meeting Dates:** 3/2, 3/3

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**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.

*FISCAL: Has minimal fiscal impact*

*REVENUE: Has minimal revenue impact*

*SENATE VOTE: Ayes, 16; Nays, 13*

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:**

- Provisions of the measure

**EFFECT OF AMENDMENT:**

-A8 The amendment removes the list of claims that an operator may not require a participant to release, except claims for greater than ordinary negligence. It permits releases for claims arising out of or resulting from participation in the sport, rental of equipment, use of a facility, or volunteering to maintain facilities or places used for the recreational activity. It also adds environmental restoration and maintenance to the non-exclusive list of examples of sport, fitness or recreational activities.

-A11 The amendment replaces the measure with the text of Senate Bill 1593 A (2025).

Detailed Summary

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*This summary has not been adopted or officially endorsed by action of the committee.*

- Permits recreation operators to require participants to release claims for ordinary negligence arising out of or resulting from participation in a sport, equipment rental, facility use, or volunteering to maintain facilities or places used for a recreational activity, if the release is executed before the person participates in the activity
- Excludes willful, wanton, reckless, and grossly negligent acts or omissions
- Applies prospectively and retroactively, so long as a final judgment on the claim has not been entered by the measure's effective date
- Declares an emergency, effective on passage

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-A14 The amendment replaces all parts of the measure that would be enacted. It makes liability releases enforceable as a matter of law if a person voluntarily executes the release before engaging in a recreational activity. It excludes willful, wanton, reckless, and grossly negligent acts or omissions. It declares an emergency, effective on passage.

-A15 The amendment replaces the measure. It makes liability releases enforceable as a matter of law if a person voluntarily executes the release before engaging in a recreational activity. It excludes willful, wanton, reckless, and grossly negligent acts or omissions. It declares an emergency, effective on passage.

-A18 The amendment modifies applicable activities and exceptions and makes it a matter of law for the court to determine what risks are inherent in the activity.

#### Detailed Summary

- Adds volunteering in connection with an activity to the definition of “sport, fitness, or recreational activity”
- Changes permissible release scope to injuries sustained “while the participant is engaged in” the activity instead of “while in the act of performing” the activity
- Removes exceptions for certain claims, including:
  - Claims arising from a violation of applicable industry safety standards
  - Injuries not sustained during the activity
  - Claims relating to the design, use, manufacture, or provision of equipment, and
  - Claims relating to failure to warn of known hazards
- Narrows applicable exception for maintenance or inspection to equipment or safety gear to that which is supplied by the operator
- Adds a provision stating that the determination of whether a risk is inherent to the sport, fitness or recreational activity is a question of law
- Clarifies that nothing in the measure modifies current ski safety statutes

-A19 The amendment incorporates the -A18 amendment but instead of adding volunteering to the definition of sport, fitness or recreational activity, it incorporates volunteering to maintain facilities or places used for a sport, fitness or recreational activity to the section permitting releases from claims for ordinary negligence.

#### Detailed Summary

- Changes permissible release scope to injuries sustained “while the participant is engaged in” the activity instead of “while in the act of performing” the activity

## SB 1517 A -A8, -A11, -A14, -A15, -A18, -A19, -A20, -A21, -A23 STAFF MEASURE SUMMARY

- Permits operators to require a release from ordinary negligence claims from persons volunteering to maintain facilities or places used for a sport, fitness or recreational activity
- Removes exceptions for certain claims, including:
  - Claims arising from a violation of applicable industry safety standards
  - Injuries not sustained during the activity
  - Claims relating to the design, use, manufacture, or provision of equipment, and
  - Claims relating to failure to warn of known hazards
- Narrows exception for maintenance or inspection to equipment or safety gear to that which is supplied by the operator
- Adds a provision stating that the determination of whether a risk is inherent to the sport, fitness or recreational activity or volunteering is a question of law
- Clarifies that nothing in the measure modifies current ski safety statutes

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-A20 The amendment incorporates the -A18 amendment and limits the exception for negligent hiring, training, credentialing or supervision claims to employees or agents of the operators.

### Detailed Summary

- Adds volunteering in connection with an activity to the definition of “sport, fitness, or recreational activity”
- Changes permissible release scope to injuries sustained “while the participant is engaged in” the activity instead of “while in the act of performing” the activity
- Removes exceptions for certain claims, including:
  - Claims arising from a violation of applicable industry safety standards
  - Injuries not sustained during the activity
  - Claims relating to the design, use, manufacture, or provision of equipment, and
  - Claims relating to failure to warn of known hazards
- Narrows applicable exception for maintenance or inspection to equipment or safety gear to that which is supplied by the operator
- Limits the exception for negligent hiring, training, credentialing or supervision claims to employees or agents of the operators
- Adds a provision stating that the determination of whether a risk is inherent to the sport, fitness or recreational activity is a question of law
- Clarifies that nothing in the measure modifies current ski safety statutes

-A21 The amendment replaces the measure, incorporating the -A15 amendment and adding an exception for negligent hiring claims for injuries sustained as a result of an act constituting a crime under Oregon law.

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*REVENUE: Has minimal revenue impact*

-A23 The amendment incorporates the -A19 amendment and the change to the negligent hiring, training, credentialing and supervision exception from the -A20.

### Detailed Summary

- Changes permissible release scope to injuries sustained “while the participant is engaged in” the activity instead of “while in the act of performing” the activity

- Permits operators to require a release from ordinary negligence claims from persons volunteering to maintain facilities or places used for a sport, fitness or recreational activity
- Removes exceptions for certain claims, including:
  - Claims arising from a violation of applicable industry safety standards
  - Injuries not sustained during the activity
  - Claims relating to the design, use, manufacture, or provision of equipment, and
  - Claims relating to failure to warn of known hazards
- Narrows exception for maintenance or inspection to equipment or safety gear to that which is supplied by the operator
- Limits the exception for negligent hiring, training, credentialing or supervision claims to employees or agents of the operators
- Adds a provision stating that the determination of whether a risk is inherent to the sport, fitness or recreational activity or volunteering is a question of law
- Clarifies that nothing in the measure modifies current ski safety statutes

*FISCAL: Has minimal fiscal impact*

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#### **BACKGROUND:**

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

- 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.

PRELIMINARY