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A T T O R N E Y A T L A W

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May 23, 2017

Senator Floyd Prozanski
Chair, Senate Committee on Judiciary
900 Court Street N.E., S-415
Salem, Oregon 97301

Re: HB 2598

Dear Chair Prozanski and Members of the Judiciary Committee:

I am a motorcyclist and an attorney that represents injured motorcyclists in Oregon and Washington. I also advocate for the passage of laws that improve motorcycle safety and result in motorcycle awareness and driver accountability. I have been riding motorcycles since 1985 and have been practicing as an attorney in Oregon since 1997. My perspective comes from years of riding motorcycles and representing clients injured in motorcycle accidents. I am submitting this letter as my written testimony in support of House Bill 2598, which amends the Vehicular Assault statute, ORS 811.060, to extend its protections to motorcyclists and their passengers.

THE VIEW FROM MY MOTORCYCLE SEAT

As a rider, I am much more aware of my surroundings than a driver in a car because I am immersed in my environment rather than watching it pass by my window. I see every vehicle around me and how they are driving. I see erratic drivers, distracted drivers, impaired drivers, and angry drivers. When I ride on my motorcycle, I see what drivers are doing inside their cars. More and more, I see drivers that are not focused on their driving. I see drivers texting or otherwise using their mobile device, watching movies, and fiddling with their GPS and entertainment consoles.

THE VIEW FROM MY DESK

As a motorcycle accident attorney, I have a unique view of what happens when drivers don't see motorcycles and the dramatic consequences to riders and their passengers. The most common motorcycle accident is when a car makes a left-hand turn in front of a motorcycle, usually because the driver is not looking for, or does not otherwise see, the oncoming motorcycle. The second most

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common motorcycle accident is when a vehicle pulls out of, or into, a side street or driveway, also usually because the driver does not look for, or otherwise see, the motorcycle. The third most common motorcycle accident is when a car rear ends a motorcycle because the driver is inattentive or distracted, usually by a mobile electronic device.

Over many accident cases I have seen a pattern. In my experience, negligent drivers are often not being cited for any violation when they cause an accident. Moreover, careless drivers are often only being cited for routine traffic violations, and reckless drivers are being cited only for careless driving. I have also seen drivers receiving cell-phone tickets when they cause accidents. It is been my experience that accident cases are usually not referred to the District Attorney's office unless there is a fatality or a drunk driver involved. I had never seen a driver charged with Assault IV or any other form of assault until just last week when I was retained by a client who was a victim of road rage. Clients have repeatedly complained to me about how careless and even reckless drivers are facing no criminal repercussions for their conduct and instead being given a traffic violation or no traffic violation at all.

OREGON'S UNIQUE VEHICLE CODE

Oregon has two accident-specific statutes in the Vehicle Code. Oregon does not have a vehicular homicide statute but it does have a vehicular assault statute, ORS 811.060. However, unlike most states with vehicular assault statutes, Oregon's vehicular assault statute only protects bicycles and pedestrians from reckless drivers. In addition, Oregon's careless driving statute, ORS 811.135, has two penalty escalators related to accidents: if the careless driving contributes to the cause of an accident the violation is escalated from a Class B violation to a Class A violation; and if the resulting accident injures a vulnerable user, as defined by ORS 801.608, the careless driver faces driver training, community service, potential license suspension and up to a \$12,500 fine.¹ And while pedestrians, bicyclists, people riding animals, highway workers, skateboarders, inline skaters, scooter riders, and farm equipment operators are on the vulnerable users list, motorcyclists and their passengers are not, even though they are equally susceptible to being directly struck by a careless driver as these other road users. Nevertheless, the Vehicle Code treats motorcycles the same as automobiles and the enforcement of the Vehicle Code against careless and reckless drivers who injure or kill motorcyclists or their passengers is the same as automobile drivers and their passengers, even though the *consequences* of those careless and reckless acts are dramatically different.²

¹ Senate Bill 493, if signed into law, would create a new offense for assault in the fourth degree when a criminally negligent driver injures a vulnerable user.

² The Oregon Department of Transportation (ODOT) submitted testimony at the House Judiciary hearing for HB 2598 which illustrates the disparate accident outcomes to motorcyclists and their passengers when compared to other vehicle operators.

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CONCLUSION

Amending the Vehicular Assault statute is a conservative step forward in protecting motorcyclists and their passengers. HB 2598 does not result in any change to the vulnerable users list, a subject that merits further discussion. However, what the proposed bill does do is protect motorcyclists and their passengers from reckless drivers, conduct whose mental requisite is just short of intentional conduct. Passing HB 2598 will result in a benefit to motorcycle safety without unjustly punishing offensive drivers. Ordinarily negligent drivers will not be subject to any additional penalties but reckless drivers will be held accountable in the form a potential Class A misdemeanor criminal conviction.

All riders accept that riding a motorcycle involves a risk of injury that is greater than driving a car but no riders and none of their passengers should have to accept the life-changing consequences of a reckless driver simply because they choose to ride a motorcycle. As a rider and a motorcycle accident attorney, I urge the committee to recommend passage of HB 2598.

Very truly yours,

/S/ CHRISTOPHER A. SLATER

Christopher A. Slater
Attorney at Law

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