June 12, 2025

Senate Committee on Finance and Revenue Oregon
State Capitol 900 Court Street NE Room 160
Salem, Oregon 97301

RE: SB 1196 – SUPPORT

I am president of the Pacific Northwest Ski Areas' Association. I'm writing in response to the conversation happening this legislative session—across public hearings and in the media—regarding liability waivers and the future of recreation access in Oregon.

This includes recent coverage in the press, as well as misleading oppositional testimony offered in hearings on HB3140 and SB1196, where some personal injury attorneys choose to misrepresent what these bills would actually do. In one example, referencing the 190,000 Oregonians who work in recreation and fitness, a personal injury attorney claimed:

"They want a free pass. They don't understand that their own children could be maimed or die, and they would have no recourse if someone was negligent." [1]

As a parent, a recreation provider, a Bend resident, and a former operations manager at an Oregon ski area—I want to offer a more accurate perspective.

I've spent 25 years mitigating risk in outdoor environments as my profession, including five years as the Lift Operations Manager at Mt. Bachelor. I understand negligence. I understand safety systems. And I understand the stakes when something goes wrong—because I've been someone who is actually responsible for risk mitigation. Not as the holder of the insurance policy, but as the one who is doing the day to day work. My motivation has never been to protect my boss from a lawsuit.

One of the first improvements I implemented at Mt. Bachelor, after previously working at a ski area in Utah for 7 years, was an overhaul of the ski lift unloading areas. I made changes which helped passengers unload more easily. This change also empowered my employees to treat ramp maintenance similar to concrete finishing—using shovels and rakes to level the ramp more precisely. The result was a notable reduction in lift stoppages due to passengers falling while unloading. While it is impossible to entirely remove the natural risk of someone falling while getting off of a chairlift, I enhanced the safety of that recreational experience. I didn't do this because I wanted to avoid a lawsuit – I did it because everyone working at a ski area wants the experience to be as safe and enjoyable as reasonably practicable.

One morning, a high-alpine lift was shut down due to abnormally high winds, one of the natural risks that come with providing recreational experiences in an outdoor environment. I led my team to activate the backup lift at lower elevation, which hadn't operated in several days. I assessed the situation and directed one of my most experienced employees to prepare the top unloading area, while I prepared the bottom loading area myself. I knew I would complete the bottom area before they would be done with the top. I looked that employee in the eye and said, "When you are ready for your daughter to unload this lift, we can open it." That's how seriously we take responsibility—for our guests and for our own families.

No one is arguing against accountability. What Oregon's recreation and fitness providers are asking for is the same basic legal framework that exists in the majority of other states and used to exist in Oregon: the ability to use liability waivers only against claims of ordinary negligence—not gross negligence, not reckless conduct, not intentional harm. Certainly not against abuse of minors, that is already criminal conduct anyway, which can't be released from. (An example of the grasping at straws the opposition has resorted to because they know that the facts are not on their side.).

Oregon's current liability laws don't prevent bad actors—they punish responsible operators. In fact, they're disproportionately punishing small businesses, because the cost of defending even minor claims—even when there's no proven wrongdoing—is unsustainable.

Personal injury attorneys are saying that without the threat of financial pain, operators have no incentive to be safe. I've provided real-world examples of how this is false. **But since they brought up the money—light must also be shown on the financial incentives driving the other side of the system—specifically, the personal injury attorneys who file claims they know are unlikely to succeed before a jury but are likely to extract settlements from the insurance system anyway.**

These settlements often result in attorneys taking 33–40% of the payout. In effect, the system is incentivizing personal injury lawyers to take easy money out of the insurance system. They refer to waivers as, "speed bumps". The result is driving up insurance costs even for those providers with no claims history, (see testimony from Anthony Lakes Recreation Association) and driving insurance underwriters out of Oregon (see the testimony from Safehold). That is not happening in our neighboring states, where balanced liability protections are in place, and there is no evidence that providers in those states are any less safe than Oregon providers, or that Oregon providers have become more safe since *Bagley*. Indeed, lawsuits have significantly increased since *Bagley,* not decreased.

These same attorneys have been making misleading statements during this legislative session—both in committee testimony and in media appearances like OPB's *Think Out Loud*. This is because they are enjoying easy access to free money, and are scared that if we return to the system that worked in Oregon for decades, that money spigot would turn off. You can see quotes from their hearing testimony and public statements, along with example verification of a misunderstanding of the facts here at https://protectoregonrec.org/setting-the-record-straight-colorado-supreme-court-liability-releases/

Every bill has financial incentives. The financial incentives surrounding this issue are telling. The defense attorneys who stand to lose money because fewer cases will be filed or go to trial support this bill because they understand the importance of Oregon's recreational industry to our state. The insurance companies who make money from higher premiums caused by Oregon's outlier liability structure support this bill. The only organized group who oppose this bill are the personal injury attorneys who are profiting from it at the expense of both the providers and the guests forced to cover the cost of high liability premiums. Oregon should work for Oregonians – not just for a few personal injury attorneys.

Oregon's current legal environment sends a clear message: if you want to be a recreation or fitness activity provider, set up shop in any of our neighboring states. If you want to open a personal injury firm, set up shop in Portland.

SB1196 provides the fair and balanced solution to this problem. It seeks to align Oregon's recreation liability laws with those of neighboring states and the federal government. This alignment is consistent with the recent passage of the federal EXPLORE Act, signed by President Biden and swiftly implemented by the National Park Service.

Thank you for taking up this important issue and please help maintain a healthy and competitive recreation economy in Oregon by passing SB1196.

Jordan Elliott
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1. https://www.oregonlive.com/politics/2025/03/oregons-recreation-industry-wants-more-legal-protection-an-injured-few-are-pushing-back.html

2. https://protectoregonrec.org/setting-the-record-straight-colorado-supreme-court-liability-releases/