

Submitter: Jim Zupancic
On Behalf Of: Oregon Health and Fitness Alliance
Committee: Senate Committee On Finance and Revenue
Measure, Appointment or Topic: SB1196

On behalf of the 300+ member Oregon Health & Fitness Alliance, comprised mostly of small independent Oregon family businesses, we offer the following testimony IN SUPPORT OF SB 1196.

1. The insurance crisis facing the Oregon ski industry today is coming to the Oregon fitness industry tomorrow. We already have evidence (testimony of Sisters Athletic Club) that withdrawal of insurance carriers in our industry is occurring now. Acceleration of premium increases and policy non-renewals is happening, and the reason is that Oregon loss ratios are substantially higher than other markets. Insurers cite Oregon's liability waiver policy as the reason for those high loss ratios.
2. Testimonial support for SB 1196 is overwhelming. Oregon Senior Judge Suzanne Upton, with over 25 years of judicial experience, testified unequivocally in support of this measure. This respected jurist's testimony was never refuted by OTLA, nor did they offer any counter-testimony from another Oregon judge. In both quantity and quality, the testimony for this bill has been overwhelmingly in support.
3. Hard Cases Can Make Bad Law. As Judge Upton states the legal maxim, sometimes hard cases make bad law. Bagley is one of those cases. When this happens, it is the Legislature's role to clarify and/or restate public policy when warranted. I have no doubt that the Bagley court, knowing what we now know, would rule differently today. This is an opportunity for the Oregon Legislature to step up and do the right thing.
4. Hyperbole and misstatements are not evidence. The only professional group that is in opposition to this bill has a direct and substantial economic interest in its defeat. Accident lawyers typically charge 33%-40% of the recovery to represent their clients. The unusual financial "losses" confirmed by the insurance companies in Oregon are corresponding financial "gains" for the accident attorneys. They are far from objective on this issue, and their references concerning how their clients may be hurt by this bill are frequently overstated or misrepresented.
5. The Oregon Supreme Court essentially Invited the Oregon Legislature to act on this issue. A careful reading of the 2014 Bagley decision reveals an extensive discussion of public policy, and how some state legislatures have spoken on this issue while others, like Oregon, have not. Woven into this discussion is the implied invitation extended by the Oregon Supreme Court for the Oregon Legislature to respond to this decision and correct the public policy if it is wrong. Time has proven

that this decision has created numerous unintended negative consequences, that if left unaddressed, will lead to even greater economic harm.

For the above and other reasons to which we would testify if afforded the opportunity to appear before the Committee, we respectfully request your support for this measure.

Jim Zupancic
President and General Counsel
Oregon Health & Fitness Alliance