

David Kayes  
Mosier, Oregon

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Oregon State Legislature  
Senate Committee On Commerce and General Government  
Submitted through OLIS

Re: SB 1593 – SUPPORT

Chair Meek, Vice-Chair Drazan, and the members of the committee:

I am a longtime Oregon resident, attorney, and outdoor sports enthusiast, and I write to you in support of SB 1593, to undo the harm caused by the Oregon Supreme Court's decision in *Bagley v. Mt. Bachelor, Inc.* (356 Or 543, 2014).

With all due respect to Mr. Bagley, and with no intention of downplaying the gravity of the injuries he suffered, we must recognize that the case of *Bagley* was poorly decided. The Justices erred when writing that “simply put, plaintiff [Bagley] had no meaningful alternative to defendant's take-it-or-leave-it terms if he wanted to participate in downhill snowboarding.” (356 Or 543 at 562.) Mr. Bagley was an “advanced expert,” by his own estimation; he could have hiked up any other location with a split board and snowboarded down, or he could have gone to a different resort. Moreover, the Oregon Supreme Court incorrectly compared ski resorts to places of public accommodation like inns and public warehouses, where the facility operator is best situated to ensure the accommodation's safety. (356 Or 543 at 568.) Again, with respect to Mr. Bagley and with no intention to downplay the severity of his injuries, he had ridden the lifts 119 times in the 26 days before his injury, and he had ridden the terrain feature where he suffered his injury multiple times before becoming injured. He, like all skiers and snowboarders, knew or should have known that conditions on a mountain can change with a moment's notice, and a ski resort cannot ensure safety at every instant; the rider is responsible for evaluating conditions.

More importantly, the events since *Bagley* have shown that this decision was not in the interest of Oregon residents, and it poses risk of harm to all who engage in, and make their livelihoods from, sports in Oregon. With insurers pulling out of Oregon, ski resorts—and other sports or outdoor activity providers—face the risk of becoming uninsurable and thus unable to do business in our state. Oregon sports enthusiasts will be forced to go for

recreation in neighboring states that lack such a backwards law. And the multitude of Oregon residents whose livelihoods rely on sports, from ski lift operators to snowboarding instructors to fishing captains and river rafting guides, to mountain bike park operators and rock climbing instructors...the list goes on and on...they will all suffer.

The bottom line is this: a balanced liability policy, allowing for lawsuits over gross negligence while allowing for waivers of ordinary negligence, is in Oregon residents' best interests—and the current situation is rapidly becoming untenable. You, Oregon representatives, must act fast. You must support aligning Oregon with other western states and federal policy: waivers are a very normal and widely accepted part of sports and of life. I support SB 1593, and you should too. It is in Oregon's best interests.

Respectfully,

*David Kayes*

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Concerned Oregon resident