

OPINION

Editorial: A legislative 'solution' that only creates more loopholes

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A bill in the Oregon Legislature that includes numerous exceptions to enforcement of liability waivers would do nothing to stem the lawsuits and increasing insurance premiums that are overwhelming recreational businesses, the editorial board writes.LC- The Oregonian

By The Oregonian Editorial Board

Two bills in the Legislature aim to help ski resorts, river guides and other recreational businesses stave off increasing lawsuits — and surging insurance premiums — as injured customers allege minor negligence. One bill has near universal support from a range of outdoor businesses, conservation groups and gyms, while the other has been broadly panned.

Guess which one is advancing?

[Senate Bill 1517](#), which has received almost no public testimony in its favor, passed the Senate and is now in the House, while the more popular [Senate Bill 1593](#) languishes in the Rules Committee. Although both bills theoretically would strengthen the enforceability of waivers that customers sign when participating in an activity, SB 1517 builds in so many exceptions that it could make today's litigious climate even worse, critics say. Insurers have already indicated that the bill would not convince them to return or remain in Oregon due to the loopholes. And SB 1517 departs from the approach that other western states take by carving out a unique path. Oregonians know too well how poorly that can end.

If legislators really want to solve the problem facing recreational businesses, they must recognize what's working in other states — and admit to what's not working here. They should either significantly cut back the many exceptions in SB 1517 or resuscitate SB 1593 as the vehicle for enforcing stronger liability waivers while still protecting Oregonians' ability to sue for serious failures by businesses.

As [The Oregonian/OregonLive's Aimee Green reported](#), both bills would allow ski operators, river guides and other recreational businesses to require waivers from customers that release them from liability for acts of "ordinary negligence" — essentially, a failure to use a reasonable level of care. That's a common standard, as states seek to balance the responsibility of individuals who knowingly accept a sport's risks while ensuring legal accountability for companies in cases of reckless conduct or gross negligence.

However, SB 1517 undercuts the low threshold that the bill is meant to uphold by naming several circumstances in which waivers would not apply for ordinary negligence. For instance, [the legislation specifically exempts claims](#) for injuries sustained when someone is not engaged in the activity — a skier who slips on ice while walking in a ski resort parking lot, for example. The waivers also would not apply to claims alleging violations of an "industry safety standard," negligent supervision of employees or a failure to warn of "known hazards," among many more categories.

The long list of exemptions and such broad wording practically light the runway for lawyers to argue that a liability waiver shouldn't apply and that a lawsuit should proceed — a boon for trial lawyers. It would do nothing to stem lawsuits alleging minor negligence that have ballooned since a 2014 Oregon Supreme Court decision declared “unconscionable” a waiver signed by an 18-year-old who was paralyzed after snowboarding off a ramp he claimed was defective. The snowboarder and his family eventually settled with the ski resort.

Certainly, just permitting lawsuits to proceed doesn't automatically translate into a big award or settlement. A Deschutes County jury last year [returned a verdict against a woman](#) who sued Mount Bachelor for \$4.7 million claiming negligence, after she broke her leg while getting off a chair lift. But even if a company prevails, the legal risks and costs all contribute to financial pressure and skyrocketing insurance premiums in recent years. Timberline recently noted its premium was [more than twice](#) from the year before and its insurer — which covered other major ski areas as well — is pulling out of Oregon. In fact, the insurer noted that Oregon is “[an extreme outlier](#)” among the 37 states where it does business, accounting for half of its losses in the \$1 million to \$10 million range.

Sen. Floyd Prozanski, D-Eugene, who is leading efforts on SB 1517, told The Oregonian/OregonLive Editorial Board that he would not support blanket protection for companies from all “ordinary negligence” claims. But that's not the only other option. Many states make clear that residents maintain their rights to sue if companies fail to follow state law, act recklessly or violate other conditions in addition to cases involving gross negligence. Those are reasonable exemptions that safeguard Oregonians' rights.

It's entirely understandable to want to provide comfort for a person who sustains a serious injury and believes a careless mistake by the business contributed. Prozanski notes that he doesn't want to see a repeat of a California case, in which a woman who lost her leg in a collision with a snow-grooming machine had her lawsuit dismissed. But the [facts of the case matter](#). A judge found that the circumstances — the signs warning of grooming machines on the slopes, the woman's acknowledgment that she saw the machine ahead of her and other precautions — did not constitute gross negligence by the business that should

negate the waiver she signed. In the face of such trauma, it seems heartless, even if it's legally the right call.

But skiing and other recreational activities do involve risks. By neutralizing liability waivers, SB 1517 shifts all the risk of someone's recreational choices from the individual to the business and levies an unreasonable expectation of perfection. Not only is that unfair to businesses big and small that provide these iconic opportunities that Oregonians value, but the costs and scarcity of insurance may lead to fewer of these businesses surviving at all.

The bill remains a work in progress, Prozanski said. He should recall the overwhelming testimony from [river conservation groups](#), [outdoor guides](#), [gyms](#) and others and pull back the exceptions.

-The Oregonian/OregonLive Editorial Board

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