

Public Policy Overview

The foundation of the snowsport safety pyramid is public policy. Public policy is generally established through legislation and regulation (or their absence) , and case law (the precedents set by decisions in similar prior law suits with similar facts). Ideally good public policy should represent a *balance*, between the various interests involved, that supports the greatest possible overall public benefit. It generally sets the parameters, limits and incentives that guide and influence focus and performance at the higher levels of the pyramid.

In automotive transportation, the public policy foundation of the pyramid is strongly weighted in favor of public safety. It is defined by extensive federal and state statutes and regulations as well as the case law that supports them. The laws and regulations set safety standards and requirements for roadway construction and operations, automobile manufacturing, and driving. Case law supports compliance with these laws and regulations by holding municipalities, automobile manufacturers and drivers liable for failure to comply.

In general, the public policy foundation for snow sport safety across the country is strongly weighted in favor of protecting ski area operators from liability costs that could impact the financial viability and success of their business.

Federal

There are no Federal ski safety statutes or regulations. Since all resorts operate in states, the Federal courts are generally required to enforce state laws and regulations or rule consistent with state case law. Therefore, Federal public policy is tied to the public policy of the states in which the individual resorts operate.

In several western states, some resorts lease all or part of the land on which they operate from the United States Forrest Service (USFS). The resorts are required to apply for a permit to operate on USFS land. The permit requires the resorts to fully indemnify the USFS for all liability. The USFS is primarily a land use regulator. It has no published regulations and sets no standards for safety on resort slopes and trails. The [permit application](#) requires resorts to document wilderness area boundry signage and markers, ski patrol staffing and operations, and a limited number other practices that generally impact but are not specific to public safety. USFS does not require resort wide accent and injury reporting and does not collect or retain resort accident and injury statistics. The limited safety related USFS lease permit requirements do not represent or set any significant federal public policy regarding safety on ski area slopes and trails.

California

In California there are no statutes related to safety on resort slopes and trails. There are also no regulations except those relating to resort operation of tramways and hospitality facilities for which safety regulations already exist for other businesses in the state.

Therefore, for the most part, California resorts are free to manage safety on their slopes and trails anyway they choose. There are no laws or regulations to guide the courts. Precedents in case law go back to earlier times when skiing was a rugged outdoorsman's sport enjoyed in the wilderness. Those precedents established a legal doctrine of "inherent risk" and "primary assumption of risk" which hold the skier legally responsible and liable for his or her own safety.

Even though ski areas have become well defined facilities marketed and open to participants of all ages, skill and experience, the California courts have continued to strictly abide by those precedents and have also enforced the very broad [liability waivers](#) resorts require with the purchase of a lift ticket or season pass.

In other snow sport states, the courts began to vary from those precedents in some cases where there appeared to be egregious negligence by the resort. In those states, the industry has lobbied their legislatures to pass laws which take discretion from the courts and spell out a long list of “inherent risks” for which they can not be held liable. These statutes are often titled ski safety statutes but really serve as resort liability protection statutes. In California, since the courts have so strongly enforced their liability protections, the resorts have felt no need to sponsor “ski safety” legislation similar to the statutes in other states

Other States

Although there have been several unsuccessful attempts to [legislate resort safety transparency](#), longstanding policy has not changed to significant degree. In California. However, in other states there continue to be efforts to amend existing Ski Safety Statutes to include some actual public safety provisions. In Oregon there has been a particularly important challenge in the courts to the enforceability of resort liability waivers. The Oregon Supreme Court recently ruled in [Bagley v Mt Bachelor Inc](#) that such liability waiver agreements are “unconscionable”, because among other reasons they “induce a lack of care” by the resort, and are therefore unenforceable.

For more detailed information on existing and evolving snowsport safety public policy in other states go to www.skilaw.com.

The Elements of a Balanced Public Policy

Ski resorts certainly have a valid concern about the potential financial impact of unlimited liability for the safety of their patrons. However, protection of ski resort liability is currently a priority which is compromising public safety. A reasonable and feasible balance would be to provide the resorts statutory liability protection if they meet and remain in compliance with a documented set of safety standards and practices. Those standards and practices could be established by a state agency or a private certification organization that would employ or engage snowsport safety experts to establish continually evolving standards and practices in consultation with resort and skier advisory groups.