

Testimony to the

## **Senate Committee on Judiciary & Ballot Measure 110 Implementation In Support of SB 213**

March 22, 2021

Good morning Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Curt Wilson, AIA representing Wilson Architecture and AIA Oregon. I've been practicing architecture for 30 years; 20 years as principal/shareholder of a firm in Eugene, and I've recently started my own firm. In addition, I'm currently the Interim Executive Vice President and CEO of AIA Oregon, the state chapter of the American Institute of Architects with over 1,600 members in Oregon. I am writing today to strongly support the -2 amendment to Senate Bill 213.

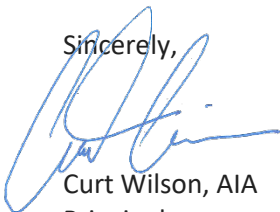
Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party even if the design professional is not negligent. This duty to defend clause is not fair, equitable or inclusive.

This requirement in professional services contracts is not fair to design firms of any size, but it is especially damaging to emerging and small businesses that typically don't have the ability to advocate against these contract requirements.

Architects, engineers, and other design professionals are protected through Professional Liability Insurance, also known as Errors and Omissions Insurance. Professional Liability Insurance is a unique insurance product to licensed professionals in that it only covers the policy holder – the architect. Duty to Defend requirements in contracts require the one party – the architect to defend or pay the legal costs of their client at the moment a conflict arises, before the assignment of responsibility has occurred. Defending the client at this point in the process is not covered by professional liability insurance policies, and therefore an out-of-pocket expense for the design professional. Modest legal fees of tens of thousands of dollars can overwhelm a small business when out of pocket, and legal fees of hundreds of thousands of dollars can be the end of a small business. Insurance is a tool small businesses invest in to protect them, therefore contract requirements that are knowingly not covered by available insurance need to be stopped when there are simple remedies to replace, especially when these remedies protect the other parties. Under the -2 amendment to SB 213 Design professionals remain fully responsible for the damages caused by their negligence and as a benefit to all parties, format the damages so they are fully covered by insurance. This is a win-win and I respectfully ask this committee to send this bill to the Senate floor.

Thank you for your service and we are happy to be a resource if you have additional questions.

Sincerely,



Curt Wilson, AIA  
Principal  
Wilson Architecture

Executive VP/CEO  
AIA Oregon

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