



**Testimony to the Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213**

March 22, 2021

Mr. Chairman Prozanski, Vice-Chair Thatcher, and members of the Senate Committee on Judiciary and Ballot Measure 110 implementation. For the record, my name is Michael Olson with Dealey Renton and Associates, an insurance brokerage focused on representation of Design Professionals for professional liability insurance. I have represented Oregon Design Professionals for the last fifteen years and am also the son of a retired Oregon Architect who started his Architecture firm in Tualatin 1983 and designed Oregon K-12 buildings for over 30 years. My testimony is in support of SB 213 and the -2 amendments (SB 213).

Under current Oregon law; ORS 30.140, Designers can be contractually required to fund their clients legal defense costs upon tender of a claim (“duty to defend”). The obligation to fund their clients defense exists absent any finding of fault against the Designers, including when allegations are meritless. When this happens, there is no available insurance coverage. When Designers lack insurance coverage, they often lack the financial wherewithal to cover these defense demands with their own assets. These financial hardships often unfairly target women, minority, and veteran owned businesses. How is this fair or equitable?

SB 213 addresses the duty to defend by clarifying the legal defense costs to be paid by the Designer apply *after* a finding of fault for a claim. When a Designer is found to be at-fault, they pay their proportionate defense and damages owed, and their professional liability insurance can pay. Nothing in SB 213 alleviates a Designers obligation to defend themselves at any time.

Opponents of SB 213 in their own words provided as written testimony in advance of this hearing: See written Testimony by Mark Landauer, on behalf of Local Government(s): *“the duty to defend should rest on the shoulders of the party or firm providing the service because the liability could only arise as a result of their services.”* Mr. Chairman and Committee, this is the crux of the problem - an assumption of guilt of the design community absent due process.

While the duty to defend issue is not new, it is unique to Designers. No other professional services industry from medical, to legal, to accounting and finance, procure services through a similar contracting process as Designers. Within the construction industry itself, Designers purchase professional liability insurance to cover their legal exposure, but professional liability is a fundamentally different insurance policy than commercial general liability for Contractors which will provide for a client’s legal defense costs prior to finding of fault. While Designers can purchase general liability coverage, these policies exclude professional services claims. SB 213 is about recognizing fairness; that Designers are a fundamentally different profession than Contractors, and we should recognize a one size fits all approach as it exists under the current statute is no longer appropriate.

SB 213 is not about drafting legislation to fix purported loopholes in the insurance marketplace. The insurance industry has investigated insurable solutions to this issue since professional liability became mainstream in the 1960’s, but no viable or sustained product has ever been developed.



Opponents of this legislation would tell you that the latest insurance policy effort resolving this issue. While we recognize its existence since 2017, we state unequivocally a single insurance product by a single insurer does not constitute a commercially available or viable marketplace.

- The insurer offering this product has confirmed it is not available to all Designers and has restrictions in place on whom it will consider – how is this inclusive?
- What happens to Designers who by relying on this insurance, executed contracts with no deference to this defense issue – what do they do when the insurer backs out of the market and they are left on the hook?
- Why should Designers have to consider supplemental insurance to cover another party's defense costs when they are not at fault – how is this fair or equitable?

SB 213 is inclusive to support every designer in Oregon, and we cannot back away from this effort for the few who can purchase this product. Designers should not need to pursue rare, unproven, untested insurance products to address an inequitable issue spanning over seventy years.

In the past decade California, Washington, Arizona, Hawaii, Georgia, North Carolina, and Texas are among the state legislatures of both parties to have tackled this issue. They did so not by forcing the insurance industry to into offering insurance products for which they have already considered. These legislatures acknowledged available insurance is already purchased by Designers if limitations were placed on the duty to defend.

You have before you an industry asking for a legislative change to codify their obligation to pay defense and damages, not absolve themselves from it. SB 213 promotes a Designers ability to stand behind their work and compensate clients. SB 213 is good for minority, women and veteran owned business and public policy - not bad for it. What good does an uninsured duty to defend provide to clients, public agencies, and their constituents if a Designer cannot afford pay it? SB 213 provides the best financial remedy for a public agency or any other client, because it provides insurance.

SB213 is fair, equitable, and inclusive. Please support this bill.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michael A. Olson', written in a cursive style.

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