

**Testimony before the
Senate Committee on the Judiciary and
Ballot Measure 110 Implementation
in support of Senate Bill 181
On behalf of the
Oregon State Bar Consumer Law Section
February 11, 2021**

Chair Prozanski and Members of the Committee:

My name is Chris Mertens. I am an attorney in Portland, Oregon. I am here today as a representative of the Oregon State Bar's Consumer Law Section, as the Section's immediate Past Chair. The Consumer Law Section is made up of over 180 attorneys from all parts of Oregon, who represent clients in matters ranging from foreclosures and debt-related disputes to consumer rights matters arising from problematic consumer products and services.

Oregon State Bar

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 15,000 active members. The Oregon State Bar serves the public interest by: regulating the legal profession and improving the quality of legal services; supporting the judiciary and improving the administration of justice; and advancing a fair, inclusive and accessible justice system.

Today I want to express the Consumer Law Section's support for SB 181 and urge the Committee to support the bill.

Under current law, at the conclusion of some civil cases a party to a case may request that their attorney fees be paid by an opposing party. If there is a basis for attorney fees under statute, and the judge has decided to grant an award of attorney fees to the prevailing party, the judge determines the appropriate amount based on an expanded list of criteria. The current statute expressly limits attorney fees to when expressly provided for by statute and only up to a reasonable amount. SB 181 does not change that requirement.

Attorneys who provide pro bono representation (including legal services organizations) on consumer-related claims with fee-shifting statutes sometimes get their fees reduced by a judge due to the pro bono representation or smaller amounts at issue. The Oregon State Bar

Consumer Law Section heard instances from Oregon attorneys, often in the context of court mandated arbitration, where pro-bono counsel's fees were reduced on the grounds that the client was otherwise indigent, or the amount at issue was not deemed significant enough, even if the indigent consumer was defending a unfounded lawsuit. This discourages attorneys from taking pro bono with right to attorney fee cases and it prevents legal service organizations from providing the best representation for indigent clients.

Senate Bill 181 provides a technical fix to clarify the existing elements considered in determining the reasonableness of fees where there is already an established right to attorney fees. SB 181 will expressly require courts to take the pro bono status of the representation and increasing access to justice for Oregonians into consideration when determining the amount of attorney fees to award. It also allows the court to recognize the true cost to attorneys and legal services organizations who take risks in representing underserved clients pro bono, and ensures that such attorneys are adequately compensated while expanding access to justice for Oregonians most in need.

There are existing sideboards on the fee determination process already in statute. For example, attorney fees may only be awarded when they are specifically authorized by statute. Senate Bill 181 does not expand the right to attorney fees. Pro bono representation and access to justice are not the only factors for the judge to determine the amount of attorney fees, but rather among a list of nine in determining the reasonable amount of the attorney fee award. Finally, as mentioned above, the amended statute already expressly requires that any attorney fee be reasonable.

Thank you for your support of SB 181. I am happy to answer any questions.

Chris Mertens

Past-Chair, OSB Consumer Law Executive Committee