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January 30, 2019

House Business and Labor Committee

Re: **Strong Opposition to proposed HB 2711 -1 amendment**

Mr. Chair and Members of the Committee:

The Professional Insurance Agents of Oregon/Idaho (PIA) is **strongly opposed** to the second subsection of Section 1 of the dash-one amendment to HB 2711, which regards a statement on the insurance policy. We are happy to work with Rep. Rayfield to find better language.

Construction contractor insurance is very complex, and this bill would increase that complexity. HB 2711, even if amended with the dash-one amendment, is problematical and could create a lot of liability for insurance agents.

Contractor exposures change unexpectedly. Almost any classification has work exclusions and limiting endorsements, which cannot realistically “appear in a prominent location on the policy”. Contractors have multiple classifications. Which ones are to be shown as “covered”? What if they are not covered because of an exclusion or excluded sub-class? Who is going to pay for that? We are losing the concept of contract if we legislate putting layman’s terms on insurance documents.

For example, a roofing contractor is covered for roofing, but probably not for hot tar or torch-down applications. Or a remodeler’s coverage excludes fixing the windows. How is a statement on a policy, endorsement or certificate going to say that?

Exclusions from certain types of torts are necessary to make liability insurance possible. Insurers cannot price or speculate on a policy of risk which has unlimited tort liability. Exclusions are necessary and found in every form of insurance. By law, insurance contracts are unilateral contracts of adhesion. Any written description or interpretation of the insurance contract could not possibly cover the scope of potential claims covered or not covered by the contract.

Some considerations:

- An insurance agent’s errors and omissions insurance covers contractors in situations when the agent has failed to do his/her job suitably.
- This bill has the potential to become clumsy and provoke unintended consequences. Some agents say that if it passes, they may stop issuing certificates of insurance (and simply send a copy of the policy) or simply stop working with contractors.
- Construction contractors went through a long period in which no insurance in the standard market was available. They had to go to the surplus line market, which is very costly and provides a narrower spectrum of coverage. Most construction contractors would not like to see any kind of market constriction of insurance.
- No other state has this provision. Most insurance companies really do not like conditions in one state that deviate from the norm.
- It would be impossible to describe complex coverages in a short statement. What is covered is in the contract and only in the contract, including its conditions, limitations and exclusions. No short statement will do.
- The bill seems unenforceable.
- For a contractor to get and maintain a contractor’s license, the applicant/licensee must provide proof of insurance to the Construction Contractor’s Board which specifies the limits of insurance they have purchased. CCB checks the limits of insurance, to confirm the limits meet the minimum limits required for the class of license being applied for or being renewed.
- This insurance is backed up by many years of court precedent. This bill reopens those reinterpretations. This may lead to constriction of the insurance market for contractors.

We’re fine with section four which says that out-of-state contractors must meet at least the minimum limits as in-state contractors for the same class of license. Our members doubt this is even a real problem anyway because most contracts have much higher requirements than the Contractor’s Board requires.

HB 2711 will complicate the insurance process and impose additional liability on agents, the majority of whom are small businesses.

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