

February 6, 2024

Senator Floyd Prozanski, Committee Chair
900 Court Street, NE, S-413
Salem, Oregon 97301
Submitted Electronically: <https://olis.oregonlegislature.gov>

RE: Testimony to the Senate Committee on Judiciary in Support of SB 1575

Greetings, Mr. Chair Prozanski, Vice-Chair Thatcher, and members of the Senate Committee on Judiciary. For the record, my name is Michael Olson with AssuredPartners, an insurance broker focused on representation of design professionals, and I am here to testify on the insurability of SB 1575.

Under current Oregon Law, designers can be contractually required to fund the legal defense of a client. This obligation exists when allegations may be meritless and can extend to cases where no fault was ever determined. When this happens there is no available insurance coverage. If SB 1575 is passed, insurance already purchased by a designer would provide coverage by reimbursing the client for incurred defense costs to the extent of the designer's determined fault.

Opponents of this bill argue designers should homogenize their insurance programs to what a Contractor can buy, because Contractors can secure insurance for this exposure. This assessment fails to recognize differences in these professions. Contractors erect and build amazing structures with steel, wood, nails, and hammers in their hands. Designers design by providing professional opinions with pen, paper, and computer-aided drafting. Why can we not recognize the diversity of these professions? While they work together on the same projects, they have vastly different obligations under the law and maintain different insurance programs and products.

Opponents of this bill also purport its passing will adversely affect them as their insurance will be expected to cover a larger share of client defense costs. There is no data to suggest this is true in the short or long term. Over the past decade, twenty states with legislature majorities of both parties have passed similar legislation, including Washington State in 2012. Comparable state associations for our opponents have not publicly reported any adverse effects. As a representative of a national insurance brokerage also focused on insuring the construction industry, these construction insurers have no publicly available claims data from these states representing a discernable shift of these demands from designers to contractors. Insurance underwriting is a complex and multifaceted process, but rating models for both designers and contractors do not consider similarly passed legislation in any of these twenty states for underwriting.

SB 1575 is not about drafting legislation to fix purported loopholes in the insurance marketplace. The professional liability insurance industry has investigated solutions to this issue since it became mainstream in

the 1960's, but no viable or sustainable product has ever been developed. The suggestions by opponents for designers to pursue supposed loopholes within other insurance products has been and continues to be commercially unavailable. Designers should not need to pursue an unavailable and unsustainable insurance product to address an inequitable issue spanning over sixty years.

SB 1575 resolves the insurability issue for design professionals with products they already purchase and creates fairness in contracting for the design community. You have before you today an industry asking for an ORS revision to codify their obligation to pay defense and damages, not absolve themselves from it. Please support this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Olson', with a stylized flourish at the end.

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