
A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that:

2 (1) The construction industry is one of the State's most

3 important industries, and is vital to the economic and

4 social welfare of the citizens of the State;

5 (2) Insurance companies doing business in the State and

6 providing insurance to contractors have long

7 represented that their insurance policies covered

8 claims for bodily injury and property damage arising

9 from construction defects. For years, contractors, and

10 others involved in the construction industry,

11 including owners, architects, engineers, and sureties,

12 and even the State itself relied upon the insurers'

13 representations and promises. Contractors purchased

14 the insurance, paid premiums, and reasonably expected

15 that coverage would be provided. Indeed, coverage was

16 provided - insurance companies have honored their

17 promises and provided coverage;



1 (3) In 2010, the Hawaii intermediate court of appeals
2 decided *Group Builders, Inc. and Tradewind Insurance*
3 *Company, Ltd. v. Admiral Insurance Company* (Haw. App.
4 2010), which held that construction defect claims are
5 not "occurrences" under contractors' commercial
6 general liability policies, and therefore those
7 policies do not cover bodily injury or property damage
8 arising from construction defects;

9 (4) The *Group Builders* decision takes away insurance
10 coverage that already existed, and has been relied
11 upon by the construction industry throughout the State
12 for many years. This decision could be economically
13 disastrous to not only contractors, but to persons who
14 have suffered injuries, property owners, and even the
15 State. One single catastrophic accident could result
16 in hundreds of millions of dollars in damages that
17 would not be covered by insurance. In 1981, a walkway
18 in a hotel in Kansas City, Missouri, collapsed,
19 killing one hundred fourteen people and injuring more
20 than two hundred other people. Under the *Group*
21 *Builders* decision, the insurance policies covering
22 contractors would not cover these claims. If the



1 coverage is not restored, numerous contractors,
 2 subcontractors, and others in the construction
 3 industry could go out of business if just one claim is
 4 asserted against them.

5 The purpose of this Act is to ensure that the insurance
 6 coverage that contractors have already paid for is provided.
 7 This Act does not change the terms of the contract of insurance
 8 as they existed, were represented, and understood at the time
 9 they were entered into. This Act serves and further broadens
 10 important public interests.

11 SECTION 2. Chapter 431, article 1, Hawaii Revised
 12 Statutes, is amended by adding a new section to part II to be
 13 appropriately designated and to read as follows:

14 "§431:1- Commercial general liability insurance
 15 policies issued to contractors. (a) Notwithstanding any
 16 provision to the contrary in section 431:1-209, it shall be a
 17 matter of law that with regard to a commercial general liability
 18 insurance policy entered into between a licensed contractor and
 19 a general casualty insurer licensed under this chapter, the
 20 commercial general liability insurance policy shall be construed
 21 to cover an omission or act of negligence that:



1 (1) Is independently recognized by principles of tort law
2 and transcends the breach of contract; or
3 (2) Arises under the performance of a contract, including
4 a negligent breach of a contract;
5 committed by a licensed contractor during the policy period that
6 causes personal injury or property damage to another, including
7 property damage to the realty, structure, project, development,
8 or improvement of another, regardless of whether the personal
9 injury or property damage itself is sustained during or after
10 the policy period.

11 (b) A commercial general liability insurance policy shall
12 not be construed to cover any:

13 (1) Intentional omission or act, including any wanton and
14 willful omission or act, committed by the licensed
15 contractor, whether the omission or act was committed
16 as an independent tort or arose out of the performance
17 of a contract, including an intentional breach of the
18 contract; or

19 (2) Omission or act of an unlicensed contractor.

20 (c) Nothing in this section shall be construed to require
21 the insurer to provide coverage for:

1 (1) Personal injuries or property damage sustained by the
2 licensed contractor, unless otherwise provided for in
3 the commercial general liability insurance policy; or

4 (2) Events, acts, or occurrences that are not otherwise
5 covered under the commercial general liability
6 insurance policy.

7 (d) Any provision in a commercial general liability
8 insurance policy that is issued or renewed in violation of this
9 section shall be void and unenforceable as against public
10 policy; provided that a commercial general liability insurance
11 policy that contains a void and unenforceable provision shall be
12 construed as if the provision were not part of the commercial
13 general liability insurance policy when the commercial general
14 liability insurance policy was issued or renewed.

15 (e) For purposes of this section:

16 "Commercial general liability insurance" means a legal
17 liability insurance policy that covers an event occurring during
18 the policy period that arises under the performance of a
19 contract and causes property damage or personal injury to
20 another, whether the damage or injury caused by the event was
21 sustained during or after policy period.



1 "Contractor" has the same meaning as set forth in section
2 444-1.

3 "Licensed contractor" means a contractor licensed under
4 section 444-9."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall apply to all commercial general
7 liability insurance policies continuing in effect or issued or
8 renewed on or after the effective date of this Act.

9 SECTION 5. This Act shall take effect on July 1, 2112.



Report Title:

Commercial Liability Insurance Policies; Construction
Professionals

Description:

Clarifies the laws relating to the interpretation of commercial
general liability insurance policies affecting contractors.
Effective July 1, 2112. (HB924 HD2)

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not legislation or evidence of legislative intent.*

