



EXECUTIVE CHAMBERS
HONOLULU

GOV. MSG. NO. 1186

NEIL ABERCROMBIE
GOVERNOR

June 3, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 3, 2011, the following bill was signed into law:

HB924 HD2 SD2

RELATING TO INSURANCE
Act 083 (11)

NEIL ABERCROMBIE
Governor, State of Hawaii

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 the construction
2 industry is a vital component of Hawaii's economy and a healthy,
3 robust construction industry is critical to the State's economic
4 recovery because of its role in generating good-paying jobs and
5 leveraging federal resources to complete important public works
6 projects. The legislature further finds that the construction
7 industry is one of the State's main economic drivers by directly
8 creating jobs and opportunities for investment, and by
9 indirectly supporting dozens of affiliated industries from
10 equipment rental to supply retailers and lunch wagons. A single
11 large construction project may provide employment for hundreds
12 of individuals including managers, support staff, and laborers
13 as well as subcontractors that, in turn, support their own
14 small-business staffs and their own related industries such as
15 dealers of specialized supplies.

16 The reach of the construction industry in Hawaii's economy
17 is broad and deep; any disruption to the industry has
18 far-reaching consequences for the State's total economy.



1 Particularly at this time, as Hawaii's economy is approaching
2 the brink of recovery from the last decade's historic recession,
3 the State can ill-afford to cripple one of its most important
4 economic engines.

5 The legislature further finds that the 2010 decision of the
6 Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v.*
7 *Admiral Ins. Co.*, 231 P.3d 67 (Haw. Ct. App. 2010), creates
8 uncertainty in the construction industry, and invalidates
9 insurance coverage that was understood to exist and that was
10 already paid for by construction professionals. Prior to the
11 *Group Builders* decision, which held that commercial general
12 liability policies do not cover bodily injury or property damage
13 arising from construction defects, construction professionals
14 entered into and paid for insurance contracts under the
15 reasonable, good-faith understanding that bodily injury and
16 property damage resulting from construction defects would be
17 covered under the insurance policy. It was on that premise that
18 general liability insurance was purchased.

19 The legislature also finds that the sudden invalidation of
20 relied-upon insurance coverage may be economically disastrous to
21 contractors, building owners, injured persons, and the general
22 public. The legislature finds that in the event of a major



1 incident involving a construction project that is affected by
2 the *Group Builders* decision, a construction professional's
3 uninsured liability for damages to people and property could
4 result not only in the loss of millions of dollars and the
5 closure of business for the construction professional and the
6 construction project, but also to the absence of redress for
7 individuals who may be harmed. The *Group Builders* decision
8 affects insurance policies for construction projects that may
9 already be in progress or even completed and for which
10 construction defects and any resulting damages may have not yet
11 become manifest. This additional uncertainty in an industry
12 that is already heavily dependent on uncontrollable factors such
13 as the weather and the global supply chain is a disincentive for
14 investment in Hawaii's construction industry and in important
15 public and private construction projects including critical
16 public infrastructure. The absence of relied-upon insurance
17 coverage affects not only construction professionals but also
18 purchasers of real estate, including residential real estate,
19 who will be left without effective remedy for problems that
20 become apparent years after purchase. Most broadly affected by
21 the *Group Builders* decision is the general public who use and
22 enjoy publicly-accessible buildings and facilities and who, in



1 the event of a catastrophic incident, will be denied remedy for
2 potentially devastating consequences to their health and safety.

3 Finally, the legislature finds that the *Group Builders*
4 decision directly affects the interests of the State. The
5 decision applies to public construction projects to which the
6 State is a party and may expose the State to fiscal liability
7 unmitigated by insurance in the event of a construction defect
8 caused by a third-party contractor. Further, by putting the
9 construction industry, contractors, subcontractors, workers,
10 developers, purchasers, and the general public at risk of
11 uncompensated, unmitigated financial and personal harm, the
12 *Group Builders* decision creates a public policy crisis that only
13 the State is in a position to remedy.

14 The purpose of this Act is to restore the insurance
15 coverage that construction industry professionals paid for and
16 to ensure that the good-faith expectations of parties at the
17 time they entered into the insurance contract are upheld.

18 SECTION 2. Chapter 431, article 1, Hawaii Revised
19 Statutes, is amended by adding a new section to be appropriately
20 designated and to read as follows:

21 "§431:1- Insurance policies issued to construction
22 professionals. (a) For purposes of a liability insurance



1 policy that covers occurrences of damage or injury during the
2 policy period and that insures a construction professional for
3 liability arising from construction-related work, the meaning of
4 the term "occurrence" shall be construed in accordance with the
5 law as it existed at the time that the insurance policy was
6 issued.

7 (b) Notwithstanding any other provision to the contrary,
8 this section shall apply to surplus lines insurance as defined
9 by section 431:8-102.

10 (c) Any provision of an insurance policy issued in
11 violation of this section shall be void and unenforceable as
12 against public policy.

13 (d) This section shall apply to all liability insurance
14 policies issued and in effect as of the effective date of this
15 Act.

16 (e) For purposes of this section:

17 "Construction professional" means a person, sole
18 proprietorship, partnership, corporation, limited liability
19 corporation, or other entity that engages in an activity
20 intended to assist in the development, construction, or repair
21 of an improvement to real property, including a contractor
22 licensed pursuant to chapter 444, a building owner, or a



1 developer of a project regardless of whether the person or
2 entity maintains a professional license.

3 "Liability insurance policy" means a contract of insurance
4 including an owner-controlled, contractor-controlled, or other
5 similar pooled insurance program that covers occurrences of
6 damage or injury during the policy period and that insures a
7 construction professional for liability arising from
8 construction-related work."

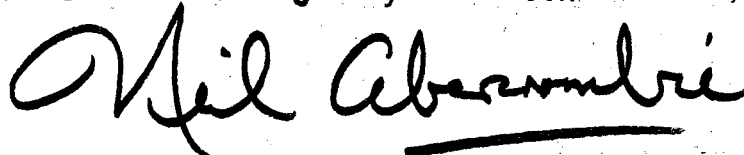
9 SECTION 3. The revisor of statutes shall insert the
10 effective date of this Act in the appropriate place in section 2
11 of this Act.

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

14

APPROVED this 3 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII

