

South Carolina Code § 38-61-70 (S.B. 0431, H.B. 3449)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-61-70 SO AS TO DEFINE A “COMMERCIAL GENERAL LIABILITY INSURANCE POLICY”, “CONSTRUCTION PROFESSIONAL”, AND “CONSTRUCTION RELATED WORK”, TO PROVIDE THAT A COMMERCIAL GENERAL LIABILITY INSURANCE POLICY MUST DEFINE OR BE DEEMED TO DEFINE THE WORD “OCCURRENCE” IN A SPECIFIC MANNER, AND TO PROVIDE FOR THE SCOPE AND LIMITS OF APPLICABILITY OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

Commercial general liability insurance policies, definitions, requirements, application limited to coverage for construction professionals for liability arising from construction related work

SECTION 1. Chapter 61, Title 38 of the 1976 Code is amended by adding:

"Section 38-61-70. (A) For purposes of this section:

- (1) 'Commercial general liability insurance policy' means a contract of insurance that covers occurrences of damages or injury during the policy period and insures a construction professional for liability arising from construction related work.
- (2) 'Construction professional' means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in the development, construction, installation, or repair of an improvement to real property.
- (3) 'Construction related work' means activities by a construction professional involving the development, construction, installation, or repair of an improvement to real property.

(B) Commercial general liability insurance policies shall contain or be deemed to contain a definition of 'occurrence' that includes:

- (1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and
- (2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself.

(C) This section is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer, including a surplus lines insurer, may include in a commercial general liability insurance policy.

(D) This section applies only to a commercial general liability insurance policy that insures a construction professional for liability arising from construction related work.

(E) This section applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all commercial general liability insurance policies issued in the past, currently in existence, or issued in the future."

Severability clause

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 3. This act takes effect upon approval by the Governor and applies to any pending or future dispute over coverage that would otherwise be affected by this section as to commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.

Arkansas Code § 23-79-155

SECTION 2. Arkansas Code Title 23, Chapter 79, Subchapter 1 is amended 1 to add an additional section to read as follows:

23-79-155. Commercial general liability insurance.

(a) A commercial general liability insurance policy offered for sale in this state shall contain a definition of "occurrence" that includes:

(1) Accidents, including continuous or repeated exposure to substantially the same general harmful conditions; and

(2) Property damage or bodily injury resulting from faulty workmanship.

(b) This section is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer may include in a commercial general liability insurance policy.

Hawaii S.B. 1192

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

SECTION 1. (a) The legislature finds that:

(1) The interpretation of insurance policies issued to construction professionals is of vital importance to the economic and social welfare of the citizens of Hawaii;

(2) Insurance policies issued to construction professionals have become increasingly complex, often containing multiple, lengthy endorsements and exclusions conflicting with the reasonable expectations of the insured; and

(3) The correct interpretation of coverage for damages arising out of construction defects is in the best interest of insurers, construction professionals, and property owners.

(b) The legislature declares that:

(1) The policy of the State is to favor broad interpretation of insurance coverage for the insured;

(2) The long-standing and continuing policy of the State is to favor a broad interpretation of an insurer's duty to defend the insured under liability insurance policies;

(3) The decision of the Hawaii intermediate court of appeals in *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.*, (Haw. App. 2009) does not properly consider a construction professional's reasonable expectation that an insurer would defend the construction professional against an action or notice of claim; and

(4) For the purposes of guiding pending and future actions in the interpretation of liability insurance policies issued to construction professionals, what has been and continues to be the policy of the State is hereby clarified and confirmed.

SECTION 2. Chapter 431, article 1, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

"S 431: 1- Insurance policies issued to construction professionals. (a) For the purposes of this section, "liability insurance policy" means a contract of insurance that covers occurrences of damage or injury during the policy period and insures a construction professional for liability arising from construction-related work.

(b) In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured. Nothing in this section:

(1) Requires coverage for damage to an insured's own work unless otherwise provided in the insurance policy; or

(2) Creates insurance coverage that is not included in the insurance policy.

(c) Upon a finding of ambiguity in an insurance policy, a court may consider a construction professional's objective and reasonable expectations in the interpretation of an insurance policy issued to a construction professional.

(d) In construing whether an insurance policy meets a construction professional's objective and reasonable expectations, the court may consider the following:

(1) The object sought to be obtained by the construction professional in the purchase of the insurance policy; and

(2) Whether a construction defect has resulted, directly or indirectly, in bodily injury, property damage, or loss of the use of property.

(e) In construing whether an insurance policy meets a construction professional's objective and reasonable expectations, a court may also consider and give weight to any writing concerning the insurance policy provision in dispute that is not protected from disclosure by the attorney-client privilege, work-product privilege, or other law, and is generated, approved, adopted, or relied on by the insurer, its parent or subsidiary

company, or an insurance rating or policy drafting organization; provided that the writing shall not be used to restrict, limit, exclude, or condition coverage or the insurer's obligation beyond that which is reasonably inferred from the words used in the insurance Policy.

(f) If an insurance policy provision that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, the court shall construe the insurance policy in favor of coverage, if reasonably and objectively possible.

(9) If an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer shall bear the burden of proving by a preponderance of the evidence that:

-(1) Any policy's limitation, exclusion, or condition in the insurance policy bars or limits coverage for the insured's legal liability in an action or notice of claim concerning a construction defect; and

-(2) Any exception to the limitation, exclusion, or condition in the insurance Policy does not restore coverage under the policy.

(h) An insurer's duty to defend a construction professional or other insured under a liability insurance policy issued to a construction professional shall be triggered by a potentially covered liability described in the following:

-(1) A notice of claim; or

-(2) A complaint, cross-claim, counterclaim, or third-party claim filed in an action against the construction professional concerning a construction defect.

(i) An insurer shall defend a construction professional who has received a notice of claim regardless of whether another insurer may also owe the insured a duty to defend the notice of claim unless authorized by law. In defending the claim, the insurer shall:

-(1) Reasonably investigate the claim; and

-(2) Reasonably cooperate with the insured in the notice of claims process; provided that this subsection shall not require the insurer to retain legal counsel for the insured or to pay any sums toward settlement of the notice of claim that are not covered by the insurance policy.

13 (j) An insurer shall not withdraw its defense of an insured construction professional or commence an action seeking reimbursement from an insured for expended defense costs unless authorized by law and unless the insurer has reserved the right in writing when accepting or assuming the defense obligation.

S 431: 1- Exclusion; claims involving loss in progress not known to insured. (a) A provision in a liability insurance policy issued to a construction professional excluding or limiting coverage for one or more claims arising from bodily injury, property damage, advertising injury, or personal injury that continues, worsens, or progresses when the policy is in effect shall be void and unenforceable if the exclusion or limitation applies to an injury or damage that was unknown to the insured at the policy's inception date.

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

(c) A court shall construe an insurance policy containing a provision that is unenforceable under this section as if the provision was not a part of the policy when the policy was issued.

(d) This section shall apply only to an insurance policy that covers occurrences of damage or injury during the policy period and that insures a construction professional for liability arising from construction-related work.

SECTION 3. This Act shall apply to all insurance policies existence or issued on or after the effective date

SECTION 4. New statutory material is underscored.

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

Colorado Statute § 13-20-808

(1)(a) The general assembly finds and determines that:

(I) The interpretation of insurance policies issued to construction professionals is of vital importance to the economic and social welfare of the citizens of Colorado and in furthering the purposes of this part 8.

(II) Insurance policies issued to construction professionals have become increasingly complex, often containing multiple, lengthy endorsements and exclusions conflicting with the reasonable expectations of the insured.

(III) The correct interpretation of coverage for damages arising out of construction defects is in the best interest of insurers, construction professionals, and property owners.

(b) The general assembly declares that:

(I) The policy of Colorado favors the interpretation of insurance coverage broadly for the insured.

(II) The long-standing and continuing policy of Colorado favors a broad interpretation of an insurer's duty to defend the insured under liability insurance policies and that this duty is a first-party benefit to and claim on behalf of the insured.

(III) The decision of the Colorado court of appeals in *General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company*, 205 P.3d 529 (Colo. App. 2009) does not properly consider a construction professional's reasonable expectation that an insurer would defend the construction professional against an action or notice of claim contemplated by this part 8.

(IV) For the purposes of guiding pending and future actions interpreting liability insurance policies issued to construction professionals, what has been and continues to be the policy of Colorado is hereby clarified and confirmed in the interpretation of insurance policies that have been and may be issued to construction professionals.

(2) For the purposes of this section:

(a) "Insurance" has the same meaning as set forth in section 10-1-102, C.R.S.

(b) "Insurance policy" means a contract of insurance.

(c) "Insurer" has the same meaning as set forth in section 10-1-102, C.R.S.

(d) "Liability insurance policy" means a contract of insurance that covers occurrences of damage or injury during the policy period and insures a construction professional for liability arising from construction-related work.

(3) In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured. Nothing in this subsection

(3):

(a) Requires coverage for damage to an insured's own work unless otherwise provided in the insurance policy; or

(b) Creates insurance coverage that is not included in the insurance policy.

(4)(a) Upon a finding of ambiguity in an insurance policy, a court may consider a construction professional's objective, reasonable expectations in the interpretation of an insurance policy issued to a construction professional.

(b) In construing an insurance policy to meet a construction professional's objective, reasonable expectations, the court may consider the following:

(I) The object sought to be obtained by the construction professional in the purchase of the insurance policy; and

(II) Whether a construction defect has resulted, directly or indirectly, in bodily injury, property damage, or loss of the use of property.

(c) In construing an insurance policy to meet a construction professional's objective, reasonable expectations, a court may consider and give weight to any writing concerning the insurance policy provision in dispute that is not protected from disclosure by the attorney-client privilege, work-product privilege, or article 72 of title 24, C.R.S., and that is generated, approved, adopted, or relied on by the insurer or its parent or subsidiary company; or an insurance rating or policy drafting organization, such as the insurance services office, inc., or its predecessor or successor organization; except that such writing shall not be used to restrict, limit, exclude, or condition coverage or the insurer's obligation beyond that which is reasonably inferred from the words used in the insurance policy.

(5) If an insurance policy provision that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, the court shall construe the insurance policy to favor coverage if reasonably and objectively possible.

(6) If an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer shall bear the burden of proving by a preponderance of the evidence that:

(a) Any policy's limitation, exclusion, or condition in the insurance policy bars or limits coverage for the insured's legal liability in an action or notice of claim made pursuant to section 13-20-803.5 concerning a construction defect; and

(b) Any exception to the limitation, exclusion, or condition in the insurance policy does not restore coverage under the policy.

(7)(a) An insurer's duty to defend a construction professional or other insured under a liability insurance policy issued to a construction professional shall be triggered by a potentially covered liability described in:

(I) A notice of claim made pursuant to section 13-20-803.5; or

(II) A complaint, cross-claim, counterclaim, or third-party claim filed in an action against the construction professional concerning a construction defect.

(b)(I) An insurer shall defend a construction professional who has received a notice of claim made pursuant to section 13-20-803.5 regardless of whether another insurer may also owe the insured a duty to defend the notice of claim unless authorized by law. In defending the claim, the insurer shall:

(A) Reasonably investigate the claim; and

(B) Reasonably cooperate with the insured in the notice of claims process.

(II) This paragraph (b) does not require the insurer to retain legal counsel for the insured or to pay any sums toward settlement of the notice of claim that are not covered by the insurance policy.

(III) An insurer shall not withdraw its defense of an insured construction professional or commence an action seeking reimbursement from an insured for expended defense cost unless authorized by law and unless the insurer has reserved such right in writing when accepting or assuming the defense obligation.