HOUSE OF REPRESENTATIVES TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII

H.B. NO. 839

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A BILL FOR AN ACT

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RELATING TO INSURANCE.

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

1	SECT	ION 1. (a) The legislature finds that:
2	(1)	The interpretation of insurance policies issued to
3		construction professionals is of vital importance to
4		the economic and social welfare of the citizens of
5		Hawaii;
6	(2)	Insurance policies issued to construction
7		professionals have become increasingly complex, often
8		containing multiple, lengthy endorsements and
9		exclusions conflicting with the reasonable
10		expectations of the insured; and
11	(3)	The correct interpretation of coverage for damages
12		arising out of construction defects is in the best
13		interest of insurers, construction professionals, and
14		property owners.
15	(b)	The legislature declares that:
16	(1)	The policy of the State is to favor broad
17		interpretation of insurance coverage for the insured;



1	(2)	The long-standing and continuing policy of the State
2		is to favor a broad interpretation of an insurer's
3		duty to defend the insured under liability insurance
4		policies;
5	(3)	The decision of the Hawaii intermediate court of
6		appeals in Group Builders, Inc. and Tradewind
7		Insurance Company, Ltd. v. Admiral Ins. Co., (Haw.
8		App. 2009) does not properly consider a construction
9		professional's reasonable expectation that an insurer
10		would defend the construction professional against an
11		action or notice of claim; and
12	(4)	For the purposes of guiding pending and future actions
13		in the interpretation of liability insurance policies
14		issued to construction professionals, what has been
15		and continues to be the policy of the State is hereby
16		clarified and confirmed.
17	SECT	ION 2. Chapter 431, article 1, Hawaii Revised
18	Statutes,	is amended by adding two new sections to part I to be
19	appropriat	tely designated and to read as follows:
20	" <u>§</u> 43:	1:1- Insurance policies issued to construction
21	profession	nals. (a) For the purposes of this section,
22	"liability	y insurance policy" means a contract of insurance that
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1	covers occurrences of damage or injury during the policy period
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2	and insures a construction professional for liability arising
3	from construction-related work.
4	(b) In interpreting a liability insurance policy issued to
5	a construction professional, a court shall presume that the work
6	of a construction professional that results in property damage,
7	including damage to the work itself or other work, is an
8	accident unless the property damage is intended and expected by
9	the insured. Nothing in this section:
10	(1) Requires coverage for damage to an insured's own work
11	unless otherwise provided in the insurance policy; or
12	(2) Creates insurance coverage that is not included in the
13	insurance policy.
14	(c) Upon a finding of ambiguity in an insurance policy, a
15	court may consider a construction professional's objective and
16	reasonable expectations in the interpretation of an insurance
17	policy issued to a construction professional.
18	(d) In construing whether an insurance policy meets a
19	construction professional's objective and reasonable
20	expectations, the court may consider the following:



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1	(1)	The object sought to be obtained by the construction
2		professional in the purchase of the insurance policy;
3		and
4	(2)	Whether a construction defect has resulted, directly
5		or indirectly, in bodily injury, property damage, or
6		loss of the use of property.
7	<u>(e)</u>	In construing whether an insurance policy meets a
8	construct	ion professional's objective and reasonable
9	expectati	ons, a court may also consider and give weight to any
10	writing c	oncerning the insurance policy provision in dispute
11	that is n	ot protected from disclosure by the attorney-client
12	privilege	, work-product privilege, or other law, and is
13	generated	, approved, adopted, or relied on by the insurer, its
14	parent or	subsidiary company, or an insurance rating or policy
15	drafting	organization; provided that the writing shall not be
16	used to r	estrict, limit, exclude, or condition coverage or the
17	insurer's	obligation beyond that which is reasonably inferred
18	from the	words used in the insurance policy.
19	<u>(f)</u>	If an insurance policy provision that appears to grant
20	<u>or restor</u>	e coverage conflicts with an insurance policy provision
21	that appe	ars to exclude or limit coverage, the court shall



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1	construe	the insurance policy in favor of coverage, if
2	reasonabl	y and objectively possible.
3	(g)	If an insurer disclaims or limits coverage under a
4	liability	insurance policy issued to a construction
5	professio	nal, the insurer shall bear the burden of proving by a
6	preponder	ance of the evidence that:
7	(1)	Any policy's limitation, exclusion, or condition in
8		the insurance policy bars or limits coverage for the
9		insured's legal liability in an action or notice of
10		claim concerning a construction defect; and
11	(2)	Any exception to the limitation, exclusion, or
12		condition in the insurance policy does not restore
13		coverage under the policy.
14	<u>(h)</u>	An insurer's duty to defend a construction
15	professio	nal or other insured under a liability insurance policy
16	issued to	a construction professional shall be triggered by a
17	potential	ly covered liability described in the following:
18	(1)	A notice of claim; or
19	(2)	A complaint, cross-claim, counterclaim, or third-party
20		claim filed in an action against the construction
21		professional concerning a construction defect.



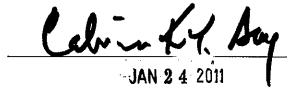
1	(i) An insurer shall defend a construction professional
2	who has received a notice of claim regardless of whether another
3	insurer may also owe the insured a duty to defend the notice of
4	claim unless authorized by law. In defending the claim, the
5	insurer shall:
6	(1) Reasonably investigate the claim; and
7	(2) Reasonably cooperate with the insured in the notice of
8	claims process;
9	provided that this subsection shall not require the insurer to
10	retain legal counsel for the insured or to pay any sums toward
11 -	settlement of the notice of claim that are not covered by the
12	insurance policy.
13	(j) An insurer shall not withdraw its defense of an
14	insured construction professional or commence an action seeking
15	reimbursement from an insured for expended defense costs unless
16	authorized by law and unless the insurer has reserved the right
17	in writing when accepting or assuming the defense obligation.
18	§431:1- Exclusion; claims involving loss in progress
19	not known to insured. (a) A provision in a liability insurance
20	policy issued to a construction professional excluding or
21	limiting coverage for one or more claims arising from bodily
22	injury, property damage, advertising injury, or personal injury
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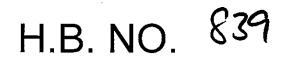
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1	that continues, worsens, or progresses when the policy is in
2	effect shall be void and unenforceable if the exclusion or
3	limitation applies to an injury or damage that was unknown to
4	the insured at the policy's inception date.
5	(b) Any provision in an insurance policy issued in
6	violation of this section shall be void and unenforceable as
7	against public policy.
8	(c) A court shall construe an insurance policy containing
9	a provision that is unenforceable under this section as if the
10	provision was not a part of the policy when the policy was
11	issued.
12	(d) This section shall apply only to an insurance policy
13	that covers occurrences of damage or injury during the policy
14	period and that insures a construction professional for
15	liability arising from construction-related work."
16	SECTION 3. This Act shall apply to all insurance policies
17	currently in existence or issued on or after the effective date
18	of this Act.
19	SECTION 4. New statutory material is underscored.
20	SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:







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Report Title: Commercial Liability Insurance Policies; Construction Professionals

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Description:

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Clarifies the laws relating to the interpretation of commercial liability insurance policies affecting construction professionals.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

