

ACT 83

H.B. NO. 924

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the construction industry is a vital component of Hawaii's economy and a healthy, robust construction industry is critical to the State's economic recovery because of its role in generating good-paying jobs and leveraging federal resources to complete important public

works projects. The legislature further finds that the construction industry is one of the State's main economic drivers by directly creating jobs and opportunities for investment, and by indirectly supporting dozens of affiliated industries from equipment rental to supply retailers and lunch wagons. A single large construction project may provide employment for hundreds of individuals including managers, support staff, and laborers as well as subcontractors that, in turn, support their own small-business staffs and their own related industries such as dealers of specialized supplies.

The reach of the construction industry in Hawaii's economy is broad and deep; any disruption to the industry has far-reaching consequences for the State's total economy. Particularly at this time, as Hawaii's economy is approaching the brink of recovery from the last decade's historic recession, the State can ill-afford to cripple one of its most important economic engines.

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

The legislature also finds that the sudden invalidation of relied-upon insurance coverage may be economically disastrous to contractors, building owners, injured persons, and the general public. The legislature finds that in the event of a major incident involving a construction project that is affected by the *Group Builders* decision, a construction professional's uninsured liability for damages to people and property could result not only in the loss of millions of dollars and the closure of business for the construction professional and the construction project, but also to the absence of redress for individuals who may be harmed. The *Group Builders* decision affects insurance policies for construction projects that may already be in progress or even completed and for which construction defects and any resulting damages may have not yet become manifest. This additional uncertainty in an industry that is already heavily dependent on uncontrollable factors such as the weather and the global supply chain is a disincentive for investment in Hawaii's construction industry and in important public and private construction projects including critical public infrastructure. The absence of relied-upon insurance coverage affects not only construction professionals but also purchasers of real estate, including residential real estate, who will be left without effective remedy for problems that become apparent years after purchase. Most broadly affected by the *Group Builders* decision is the general public who use and enjoy publicly-accessible buildings and facilities and who, in the event of a catastrophic incident, will be denied remedy for potentially devastating consequences to their health and safety.

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

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

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

“§431:1- Insurance policies issued to construction professionals. (a) For purposes of a liability 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, the meaning of the term “occurrence” shall be construed in accordance with the law as it existed at the time that the insurance policy was issued.

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

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

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

(e) For purposes of this section:

“Construction professional” means a person, sole proprietorship, partnership, corporation, limited liability corporation, or other entity that engages in an activity intended to assist in the development, construction, or repair of an improvement to real property, including a contractor licensed pursuant to chapter 444, a building owner, or a developer of a project regardless of whether the person or entity maintains a professional license.

“Liability insurance policy” means a contract of insurance including an owner-controlled, contractor-controlled, or other similar pooled insurance program 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. The revisor of statutes shall insert the effective date of this Act in the appropriate place in section 2 of this Act.

SECTION 4. New statutory material is underscored.¹

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

(Approved June 3, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.