

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

H.B. NO. 924
H.D. 2

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:

- (1) The construction industry is one of the State's most important industries, and is vital to the economic and social welfare of the citizens of the State;
- (2) Insurance companies doing business in the State and providing insurance to contractors have long represented that their insurance policies covered claims for bodily injury and property damage arising from construction defects. For years, contractors, and others involved in the construction industry, including owners, architects, engineers, and sureties, and even the State itself relied upon the insurers' representations and promises. Contractors purchased the insurance, paid premiums, and reasonably expected that coverage would be provided. Indeed, coverage was provided - insurance companies have honored their promises and provided coverage;
- (3) In 2010, the Hawaii intermediate court of appeals decided *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Insurance Company* (Haw. App. 2010), which held that construction defect claims are not "occurrences" under

contractors' commercial general liability policies, and therefore those policies do not cover bodily injury or property damage arising from construction defects;

- (4) The *Group Builders* decision takes away insurance coverage that already existed, and has been relied upon by the construction industry throughout the State for many years. This decision could be economically disastrous to not only contractors, but to persons who have suffered injuries, property owners, and even the State. One single catastrophic accident could result in hundreds of millions of dollars in damages that would not be covered by insurance. In 1981, a walkway in a hotel in Kansas City, Missouri, collapsed, killing one hundred fourteen people and injuring more than two hundred other people. Under the *Group Builders* decision, the insurance policies covering contractors would not cover these claims. If the coverage is not restored, numerous contractors, subcontractors, and others in the construction industry could go out of business if just one claim is asserted against them.

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

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

"§431:1- Commercial general liability insurance policies

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

- (1) Is independently recognized by principles of tort law and transcends the breach of contract; or
- (2) Arises under the performance of a contract, including a negligent breach of a contract;

committed by a licensed contractor during the policy period that causes personal injury or property damage to another, including property damage to the realty, structure, project, development, or improvement of another, regardless of whether the personal injury or property damage itself is sustained during or after the policy period.

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

- (1) Intentional omission or act, including any wanton and willful omission or act, committed by the licensed contractor, whether the omission or act was committed as an independent tort or arose out of the performance of a contract, including an intentional breach of the contract;
or
- (2) Omission or act of an unlicensed contractor.

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

- (1) Personal injuries or property damage sustained by the licensed contractor, unless otherwise provided for in the

commercial general liability insurance policy; or

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

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

(e) For purposes of this section:

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

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

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

SECTION 3. New statutory material is underscored.

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

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)

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

Hawaii State Legislature

2011 Regular Session

HB924 HD2 SD2

View all versions of this measure	Show Hearing Notices	Show Committee Reports	Show Testimony	Show on Demand Media
 View PDF of measure text	 Subscribe to RSS feed	Submit Testimony for this Measure		

Measure Title: RELATING TO INSURANCE.

Report Title: Commercial Liability Insurance Policies; Construction Professionals

Description: Clarifies that the terms of a liability insurance policy issued to a construction professional shall be construed according to the reasonable expectations of the parties at the time that the insurance policy was issued. (SD2)

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): ITO, AWANA, CHANG, MANAHAN, MIZUNO, YAMANE, Ichiyama, M. Lee, Souki

<u>Date</u>		<u>Status Text</u>
1/24/2011	H	Pending introduction.
1/26/2011	H	Introduced and Pass First Reading.
1/26/2011	H	Referred to ERB, CPC/JUD, referral sheet 2
2/8/2011	H	Bill scheduled to be heard by ERB on Thursday, 02-10-11 8:00AM in House conference room 312.
2/10/2011	H	The committees on ERB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 11 Ayes: Representative(s) McKelvey, Choy, Awana, Brower, Evans, Nishimoto, Tokioka, Tsuji; Ayes with reservations: Representative(s) Hashem, Marumoto, Pine; Noes: none; and Excused: none.

2/18/2011	H	Reported from ERB (Stand. Com. Rep. No. 446) as amended in HD 1, recommending passage on Second Reading and referral to CPC/JUD.
2/18/2011	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on CPC/JUD with none voting no (0) and Representative(s) Carroll, Herkes, McKelvey excused (3).
2/18/2011	H	Bill scheduled to be heard by CPC/JUD on Wednesday, 02-23-11 2:00PM in House conference room 325.
2/23/2011	H	The committees on CPC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 12 Ayes: Representative(s) Herkes, Yamane, Brower, Cabanilla, Ito, Keith-Agaran, McKelvey, B. Oshiro, Souki, Tsuji; Ayes with reservations: Representative(s) Luke, Ching; Noes: none; and 4 Excused: Representative(s) Carroll, Morita, Marumoto, Thielen.
2/23/2011	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 12 Ayes: Representative(s) Keith-Agaran, Rhoads, Brower, Cabanilla, Herkes, Ito, McKelvey, B. Oshiro, Souki, Tsuji, Fontaine; Ayes with reservations: Representative(s) Luke; Noes: none; and 4 Excused: Representative(s) Carroll, Morita, Marumoto, Thielen.
3/4/2011	H	Reported from CPC/JUD (Stand. Com. Rep. No. 691) as amended in HD 2, recommending passage on Third Reading.
3/4/2011	H	Forty-eight (48) hours notice Tuesday, 03-08-11.
3/8/2011	H	Passed Third Reading as amended in HD 2 with none voting aye with reservations; none voting no (0) and none excused (0). Transmitted to Senate.
3/10/2011	S	Received from House (Hse. Com. No. 198).
3/10/2011	S	Passed First Reading.
3/10/2011	S	Referred to CPN, JDL.
3/11/2011	S	The committee(s) on CPN has scheduled a public hearing on 03-15-11 9:00AM in conference room 229.
3/15/2011	S	The committee(s) on CPN deferred the measure until 03-17-11 9:45AM in conference room 229.
3/17/2011	S	The committee(s) on CPN recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in CPN were as follows: 5 Aye(s): Senator(s) Baker, Taniguchi, Green, Nishihara, Slom; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Galuteria, Solomon.
3/24/2011	S	Reported from CPN (Stand. Com. Rep. No. 922) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDL.
3/24/2011	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDL.
4/1/2011	S	The committee(s) on JDL will hold a public decision making on 04-06-11 9:00AM in conference room 016.

4/6/2011	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 5 Aye(s): Senator(s) Hee, Shimabukuro, Gabbard, Ihara, Slom; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/8/2011	S	Reported from JDL (Stand. Com. Rep. No. 1210) with recommendation of passage on Third Reading, as amended (SD 2).
4/8/2011	S	48 Hrs. Notice 04-12-11.
4/12/2011	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
4/12/2011	H	Returned from Senate (Sen. Com. No. 516) in amended form (SD 2).
4/14/2011	H	House disagrees with Senate amendment (s).
4/15/2011	S	Received notice of disagreement (Hse. Com. No. 573).
4/18/2011	S	Senate Conferees appointed: Baker, Chair; Hee, Co-Chair(s); Slom.
4/18/2011	H	Received notice of Senate conferees (Sen. Com. No. 644).
4/28/2011	H	Reconsideration of action taken on 04-14-11.
4/29/2011	S	Received notice of House reconsideration of action in disagreeing to the amendments proposed by the Senate (Hse. Com. No. 692).
4/29/2011	H	Deferred one day 05-03-11.
5/3/2011	H	House agrees to Senate amendment(s).
5/3/2011	H	Passed Final Reading as amended in SD 2 with none voting no (0) and Representative(s) Carroll, Pine excused (2).
5/5/2011	S	Received notice of House agreement and passage on Final Reading (Hse. Com. No. 701).
5/6/2011	H	Transmitted to Governor.
6/9/2011	H	Act 083, on 6/3/2011 (Gov. Msg. No. 1186).
6/9/2011	S	Act 083, 6/3/2011 (Gov. Msg. No. 1186).

S = Senate

H = House

D = Data Systems

\$ = Appropriation measure

ConAm = Constitutional Amendment

Please read our [Disclaimer Statement](#).

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

This report was generated on Jul 07, 2011 at 4:24:47 PM

HB924 HD2 SD2