

Colorado *Legislative Council Staff Fiscal Note*  
**NO FISCAL IMPACT**

---

**Drafting Number:** LLS 10-1006**Date:** April 5, 2010**Prime Sponsor(s):** Rep. Rice  
Sen. Scheffel**Bill Status:** House Business Affairs and Labor  
**Fiscal Analyst:** Harry Zeid (303-866-4753)

---

**TITLE:** CONCERNING PROFESSIONAL LIABILITY INSURANCE POLICIES ISSUED TO CONSTRUCTION PROFESSIONALS.

### Summary of Legislation

The Colorado Court of Appeals ruled in its 2009 decision (*General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company*) that complaints in construction defect cases that only allege poor workmanship do not meet the definition of an occurrence that triggers a duty to defend in a commercial general liability policy (CGL). This bill defines property damage, including poor workmanship, as an occurrence that would trigger a CGL policy claim.

For the purposes of guiding pending and future actions in interpreting liability insurance policies issued to construction professionals, the bill imposes the following rules of contract construction to guide a court in such cases:

- a court should presume that: compliance with a construction professional's objective, reasonable expectations is intended; the entire policy is to be effective and read as a whole; a just and reasonable result is intended; ambiguity in a policy is to be construed in favor of coverage; a result that renders a part of coverage illusory is not intended; and the work of a construction professional that results in property damage is an accident unless the property damage is intended and expected by the insured;
- when weighing conflicting provisions, the court should construe the contract to favor coverage; and
- the insurer bears the burden of proving that a policy provision limits or bars coverage.

The bill prohibits a professional liability insurer from excluding or limiting coverage of acts arising before the policy was issued unless the insured knows of defects that have a likelihood to subject the insurer to damages and fails to disclose this to the insurer. Finally, the bill states that an insurance policy that conflicts with this provision is unenforceable.

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to all insurance policies currently in existence or issued on or after that date.

### Assessment

The bill is assessed at no fiscal impact. It modifies professional liability insurance policies issued to construction professionals, but should not affect state or local government revenue or expenditures.

The Judicial Branch indicates that construction defect cases are among the most complicated, resource intensive civil cases filed with the courts. However, the changes made by this bill are not expected to affect the court's workload in handling coverage disputes under CGL policies to the extent that new appropriations are necessary.

**Departments Contacted**

Judicial            Regulatory Agencies            Law