

FINAL
FISCAL NOTE

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Prime Sponsor(s): Rep. Rice
Sen. Scheffel

Bill Status: Signed into Law

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TITLE: CONCERNING COMMERCIAL 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). For the purposes of guiding pending and future actions in interpreting liability insurance policies issued to construction professionals, the bill clarifies the state's policy as follows:

- 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 is an accident unless the property damage is intended and expected by the insured;
- 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;
- 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;
- if an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer shall bear the burden of providing a preponderance of the evidence that the policy bars or limits coverage for legal liability and any exception to the limitation, exclusion, or condition in the policy does not restore coverage under the policy; and
- an insurer's duty to defend a construction professional or other insured under a liability insurance policy shall be triggered by a potentially covered liability.

The bill was signed by the Governor and became law on May 21, 2010. The bill 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 provides the court with guidance regarding the interpretation of 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 commercial liability insurance policies to the extent that new appropriations are necessary.

Departments Contacted

Judicial

Regulatory Agencies

Law