

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 7, 2010
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

HB10-1394 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 3, strike lines 3 and 4 and substitute "ARISING
- 2 OUT OF CONSTRUCTION DEFECTS IS IN THE BEST INTEREST OF INSURERS,
- 3 CONSTRUCTION PROFESSIONALS, AND PROPERTY".

- 4 Page 4, line 12, after "AMBIGUITY" insert "OR UNCERTAINTY".

- 5 Page 4, strike lines 17 and 18 and substitute "IN PROPERTY DAMAGE,
- 6 INCLUDING DAMAGE TO THE WORK ITSELF, OTHER WORK, OR PROPERTY, IS
- 7 AN ACCIDENT UNLESS THE PROPERTY DAMAGE IS INTENDED AND EXPECTED
- 8 FROM THE STANDPOINT OF".

- 9 Page 4, line 24, after "POLICY;" add "AND".

- 10 Page 4, line 27, strike "PROPERTY; AND" and substitute "PROPERTY".

- 11 Page 5, line 6, strike "ORGANIZATION," and substitute "ORGANIZATION
- 12 EXCEPT WRITINGS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE,".

- 13 Page 5, line 7, strike "ORGANIZATION" and substitute "OFFICE, INC.,".

- 14 Page 5, line 12, strike "CONTRACT;" and substitute "CONTRACT; AND".

- 15 Page 5, line 15, after "GRANT" insert "OR RESTORE".

- 1 Page 5, line 17, after "EXCLUDE" insert "OR LIMIT".
- 2 Page 5, line 18, strike "CONTRACT" and substitute "INSURANCE POLICY".
- 3 Page 5, line 20, strike "COVERAGE IN A" and substitute "OR LIMITS
4 COVERAGE UNDER AN INSURANCE".
- 5 Page 5, strike lines 24 and 25 and substitute "INSURANCE POLICY BARS OR
6 LIMITS COVERAGE FOR THE INSURED'S LEGAL LIABILITY IN AN ACTION OR
7 NOTICE OF CLAIM CONCERNING A CONSTRUCTION DEFECT; AND".
- 8 Page 5, line 27, strike "COVERAGE GRANT" and substitute "INSURANCE
9 POLICY".
- 10 Page 6, after line 1 insert:
- 11 "(7) (a) AN INSURER'S DUTY TO DEFEND A CONSTRUCTION
12 PROFESSIONAL OR OTHER INSURED UNDER A LIABILITY INSURANCE POLICY
13 ISSUED TO A CONSTRUCTION PROFESSIONAL SHALL BE TRIGGERED:
- 14 (I) BY A POTENTIALLY COVERED LIABILITY DESCRIBED IN THE
15 NOTICE OF CLAIM MADE PURSUANT TO SECTION 13-20-803.5; OR
- 16 (II) BY A POTENTIALLY COVERED LIABILITY DESCRIBED IN THE
17 COMPLAINT, CROSS -CLAIM, COUNTERCLAIM, OR THIRD-PARTY CLAIM FILED
18 IN AN ACTION AGAINST THE CONSTRUCTION PROFESSIONAL CONCERNING
19 A CONSTRUCTION DEFECT.
- 20 (b) AN INSURER SHALL NOT DENY ITS DEFENSE OF AN INSURED
21 CONSTRUCTION PROFESSIONAL UNLESS AUTHORIZED BY LAW. AN INSURER
22 SHALL NOT WITHDRAW ITS DEFENSE OF AN INSURED CONSTRUCTION
23 PROFESSIONAL UNLESS AUTHORIZED BY LAW AND UNLESS THE INSURER
24 HAS RESERVED THE RIGHT IN WRITING WHEN ACCEPTING THE DEFENSE
25 OBLIGATION."
- 26 Page 6, line 5, strike "**of**" and substitute "**in**".
- 27 Page 6, strike lines 14 and 15 and substitute "INSURER SHALL NOT ISSUE
28 A LIABILITY INSURANCE POLICY TO A CONSTRUCTION PROFESSIONAL THAT
29 INCLUDES A".

- 1 Page 6, line 17, strike "A CLAIM" and substitute "ONE OR MORE CLAIMS".
- 2 Page 6, strike lines 21 through 23 and substitute:
- 3 "(3) AN INSURER SHALL NOT ISSUE A LIABILITY INSURANCE POLICY
4 TO A CONSTRUCTION PROFESSIONAL THAT EXCLUDES OR LIMITS COVERAGE
5 UNDER THE POLICY FOR ONE OR MORE CLAIMS ARISING".
- 6 Page 6, line 26, strike "IF:" and substitute "UNLESS THE EXCLUSION OR
7 LIMITATION APPLIES TO THE FOLLOWING:".
- 8 Page 7, line 1, before "BODILY" insert "MANIFESTATION OF THE".
- 9 Page 7, line 6, strike "RESULTING FROM" and substitute "BECAUSE OF A
10 LOSS ARISING OUT OF".
- 11 Page 7, line 12, strike "FROM" and substitute "OUT OF".
- 12 Page 7, line 17, strike "REQUIRED" and substitute "DESCRIBED".
- 13 Page 7, line 20, strike "UNENFORCEABLE." and substitute
14 "UNENFORCEABLE AS AGAINST PUBLIC POLICY.".
- 15 Page 7, after line 23 insert:
- 16 "(6) THIS SECTION APPLIES ONLY TO INSURANCE POLICIES THAT
17 COVER THE WORK OF A CONSTRUCTION PROFESSIONAL.".
- 18 Page 1, line 101, strike "**PROFESSIONAL**" and substitute "**COMMERCIAL**".

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