**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 15‑3‑645 SO AS TO PROVIDE THAT A PROVISION IN AN INSURANCE POLICY IS VOID AND UNENFORCEABLE IF IT SHIELDS A CONSTRUCTION PROFESSIONAL FROM LIABILITY FOR DAMAGE TO REAL PROPERTY RESULTING FROM A DEFECTIVE OR UNSAFE CONDITION CAUSED BY AN IMPROVEMENT TO THE PROPERTY EVEN IF THAT DAMAGE OCCURS PRIOR TO THE INCEPTION DATE OF THE POLICY AND CONTINUES TO WORSEN WHILE COVERAGE UNDER THE POLICY WAS IN EFFECT, TO PROVIDE EXCEPTIONS, AND TO PROVIDE CERTAIN DEFINITIONS, AMONG OTHER THINGS; AND BY ADDING SECTION 38‑61‑70 SO AS TO PROVIDE CERTAIN DEFINITIONS RELATED TO LIABILITY INSURANCE, AND TO PROVIDE FOR THE INTERPRETATION OF A LIABILITY INSURANCE POLICY ISSUED TO A CONSTRUCTION PROFESSIONAL IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 3, Title 15 of the 1976 Code is amended by adding:

“Section 15‑3‑645. (A)(1) A provision in a liability insurance contract issued to a construction professional that excludes or limits coverage for one or more claims for personal injury, death, or damage to property based upon or arising out of the defective or unsafe condition of an improvement to real property that occurs prior to the inception date of the policy and continues, worsens, or progresses while the policy is in effect is void and unenforceable and a court shall construe this provision as if it was not part of the policy when issued, notwithstanding another provision of law.

(2) The provisions of item (1) do not apply if the insured had actual knowledge of the injury or damage prior to the inception date of the policy.

(B) This section only applies to an 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 activities.

(C) For purposes of this section:

(1) ‘Construction professional’ means a construction professional as defined in Section 38‑61‑70(A)(1); and

(2) ‘Liability insurance policy’ means a liability insurance policy as defined in Section 38‑61‑70(A)(2).”

SECTION 2. Chapter 61, Title 38 of the 1976 Code is amended by adding:

“Section 38‑61‑70. (A) For the purposes of this section:

(1) ‘Construction professional’ means a person who engages in an activity intended to assist in the design, construction, or repair of an improvement to real property regardless of whether he maintains a professional license under Title 40.

(2) ‘Liability insurance policy’ means a contract that insures a construction professional for liability arising from occurrences of damage or injury during the policy period.

(B) In interpreting a liability insurance policy issued to a construction professional:

(1) continuous or repeated exposure to substantially the same general harmful condition constitutes an ‘occurrence’ regardless of whether an accident or fortuitous event exists;

(2) coverage for damage to the work of an insured may not be construed and only may be found when expressly provided in the liability insurance policy;

(3) the question of whether an ambiguity exists in an liability insurance policy must be considered in light of the objective and reasonable expectations of a construction professional in interpreting the policy; and

(4) if a provision in the policy that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, construction of the insurance policy must be to favor coverage if reasonably and objectively possible.”

SECTION 3. This act takes effect upon approval by the Governor and applies to all contracts of insurance in existence on or issued after the effective date and applies to any dispute over coverage that would otherwise be affected by this section ongoing as of the effective date.

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