COMMITTEE REPORT

May 4, 2011

**S. 431**

Introduced by Senators McConnell, Rankin, Setzler, Campbell, Shoopman, Reese, Bright, Alexander, S. Martin, Fair, Cromer, Bryant, Elliott, O’Dell, Campsen, Ford, Rose, Lourie, Cleary, Verdin, McGill, Williams, Nicholson, Knotts, Land and Scott

S. Printed 5/4/11--H.

Read the first time March 31, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 431) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑61‑70 so as to provide that a liability insurance policy issued by an insurer, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 61, Title 38 of the 1976 Code is amended by adding:

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

(1) ‘Commercial general liability insurance policy’ means a contract of insurance that covers occurrences of damages or injury during the policy period and insures a construction professional for liability arising from construction related work.

(2) ‘Construction professional’ means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in the development, construction, installation, or repair of an improvement to real property.

(3) ‘Construction related work’ means activities by a construction professional involving the development, construction, installation, or repair of an improvement to real property.

(B) Commercial general liability insurance policies shall contain or be deemed to contain a definition of ‘occurrence’ that includes:

(1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and

(2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself.

(C) This section is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer, including a surplus lines insurer, may include in a commercial general liability insurance policy.

(D) This section applies only to a commercial general liability insurance policy that insures a construction professional for liability arising from construction related work.

(E) This section applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor and applies to any pending or future dispute over coverage that would otherwise be affected by this section as to commercial general liability insurance policies issued in the past, currently in existence, or issued in the future. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Department of Insurance

The department reports that the bill would generate additional telephone inquiries and filings that will need to be reviewed by the Department’s Office of Market Services. However, the cost is estimated to be minimal and will be absorbed using the agency’s existing resources.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑61‑70 SO AS TO PROVIDE THAT A LIABILITY INSURANCE POLICY ISSUED BY AN INSURER AND COVERING A CONSTRUCTION PROFESSIONAL IN THIS STATE MUST BE BROADLY CONSTRUED IN FAVOR OF COVERAGE, AND TO PROVIDE THAT WORK OF A CONSTRUCTION PROFESSIONAL RESULTING IN PROPERTY DAMAGE IN CERTAIN CIRCUMSTANCES CONSTITUTES AN OCCURRENCE AS COMMONLY DEFINED IN LIABILITY INSURANCE AND IS NOT THE INTENDED OR EXPECTED CONSEQUENCE OF THE WORK OF THE CONSTRUCTION PROFESSIONAL.

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

SECTION 1. Chapter 61, Title 38 of the 1976 Code is amended by adding:

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

(1) ‘Insurance’ has the same meaning as set forth in Section 38-1-20(25);

(2) ‘Insurer’ has the same meaning as set forth in Section 38-1-20(33);

(3) ‘Insurance policy’ has the same meaning as set forth in Section 38-1-20(45);

(4) ‘Liability insurance policy’ means a contract of insurance that covers occurrences of damages or injury during the policy period and insures a construction professional for liability arising from construction-related work; and

(5) ‘Construction professional’ means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in an activity intended to assist in the design, development, construction, installation, or repair of an improvement to real property regardless of whether this person or entity maintains a professional license pursuant to Title 40.

(B) For a liability insurance policy issued to a construction professional, an ‘occurrence’ means, at a minimum:

(1) an accident; or

(2) continuous or repeated exposure to substantially the same general harmful condition or substance.

No additional requirement of a fortuitous event is needed to constitute an ‘occurrence’.

(C) 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.

(D) This section applies only to an insurance policy that insures a construction professional for liability arising from construction related activities.

(E) This section applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all contracts of insurance issued in the past, currently in existence, or issued in the future.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor and applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all contracts of insurance issued in the past, currently in existence, or issued in the future.

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