HLS 16RS-1310 ORIGINAL

2016 Regular Session

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HOUSE CONCURRENT RESOLUTION NO. 111

BY REPRESENTATIVE FOIL

CONTRACTORS/CONSTRUCTION: Authorizes and directs the Louisiana State Licensing Board for Contractors to provide recommendations with respect to whether contractors' insurance policies should insure claims against contractors' workmanship

A CONCURRENT RESOLUTION

2	To authorize and direct the Louisiana State Licensing Board for Contractors to conduct a
3	study and to provide recommendations concerning contractors' general liability
4	policies and whether such policies should insure claims against contractors'
5	workmanship.
6	WHEREAS, a Commercial General Liability Policy (CGL) generally does not insure
7	a contractor for property damage due to the contractor's own faulty workmanship; however,
8	the Louisiana Second Circuit Court of Appeals affirmed the holding of a lower court that a
9	certain general contractor was entitled to insurance coverage for the costs of repairing
10	defective work performed by a subcontractor (Broadmoor Anderson v. National Union Fire
11	Insurance of Louisiana, 40,096 (La. App. 2d Cir. 9/28/05), 912 So. 2d 400); and
12	WHEREAS, the insurance policy at issue was a CGL policy, and such policy was
13	purchased by the project owner and named as additional insureds "all contractors" and "all
14	tiers of subcontractors"; and
15	WHEREAS, after the project's completion, the owner noticed problems with leaks
16	concerning ceramic tile shower stalls in certain rooms, and such leaks were determined to
17	have been caused by defective workmanship in the installation of certain shower pans; and
18	WHEREAS, the general contractor and subcontractor collaborated in efforts of
19	remediation; and

1	WHEREAS, shortly after the commencement of repairs, the general contractor made
2	a formal demand on the CGL insurer for the general contractor's costs for remediation; and
3	WHEREAS, ultimately, the general contractor filed suit against the insurer and
4	obtained a summary judgment finding coverage in favor of the general contractor; and
5	WHEREAS, cases of precedence hold that a contractor is not entitled to insurance
6	coverage through a CGL policy for property damage caused by the contractor's own
7	defective performance, and a common refrain among those cases is that "a CGL policy is not
8	intended to serve as a performance bond"; and
9	WHEREAS, the ruling in Broadmoor Anderson does not directly affect that common
10	refrain, because the subcontractor responsible for the defective work was not entitled to any
11	insurance coverage for costs of remediation; and
12	WHEREAS, as summarized by a California court, "Generally liability policiesare
13	not designed to provide contractorswith coverage against claims their work is inferior or
14	defectiveRather liability coverage comes into play when the contractor's (insured)
15	defective materials or work cause injury to property other than the insured's own work or
16	products." (Clarendon America Ins. Co. v. General Sec. Indem. Co. of Arizona (2011) 193
17	Cal. App. 4th 1311, 1325) (emphasis added); and
18	WHEREAS, the Louisiana State Licensing Board for Contractors (board) is the state
19	agency authorized to license and regulate building contractors in this state, and such board
20	serves the mission and purpose of "the protection of the general public from incompetent and
21	fraudulent acts of a contractor while promoting the integrity of the construction industry";
22	and
23	WHEREAS, many Louisiana citizens hire board-licensed contractors to perform and
24	complete both residential and commercial constructions in this state; and
25	WHEREAS, some such citizens allege adverse outcomes with respect to defective
26	constructions resulting from the substandard workmanship of respective licensed
27	contractors; and
28	WHEREAS, such allegations of adverse outcomes prompt a particular concern of
29	such citizens relative to CGL policies of contractors licensed in this state; and

1	WHEREAS, such particular concern relates to the aforementioned common refrain
2	that "a CGL policy is not intended to serve as a performance bond" and thus, a CGL policy
3	generally does not contain coverage to insure citizens' claims against contractors with
4	respect to contractors' substandard or faulty workmanship; and
5	WHEREAS, while the state shares interest in the board's mission and purpose to
6	protect the general public from certain incompetent and fraudulent acts while promoting
7	integrity of the state's construction industry, it is also a state interest to determine whether
8	the general public may be better protected by CGL policies that insure citizens' claims
9	against contractors, when such claims result from assertions of substandard or faulty
10	workmanship of contractors licensed in this state through the Louisiana State Licensing
11	Board for Contractors.
12	THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
13	authorize and direct the Louisiana State Licensing Board for Contractors to conduct a study
14	and to provide recommendations concerning contractors' general liability policies and
15	whether such policies should insure claims against contractors' workmanship.
16	BE IT FURTHER RESOLVED that the Louisiana State Licensing Board for
17	Contractors is hereby authorized to exercise its discretion as to the use of or engagement in
18	certain research, consultations, studies, or any other pertinent information deemed essential
19	by the board in its determination as to whether such CGL policies should necessarily insure
20	claims against contractors' workmanship.
21	BE IT FURTHER RESOLVED that the Louisiana State Licensing Board for
22	Contractors shall submit a written report of its findings and recommendations to the House
23	Committee on Commerce and Senate Committee on Commerce, Consumer Protection, and
24	International Affairs on or before February 1, 2017.
25	BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
26	executive director of the Louisiana State Licensing Board for Contractors.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HCR 111 Original

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Authorizes and directs the La. State Licensing Bd. for Contractors to report its findings and recommendations concerning contractors' general liability policies and whether such policies should insure claims against contractors' workmanship.

Requests a written report of its findings and recommendations by Feb. 1, 2017.