ASSEMBLY, No. 3401

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman GARY S. SCHAER
District 36 (Bergen and Passaic)

SYNOPSIS

Requires that definition of occurrence in certain property damage liability insurance policies include coverage for faulty workmanship.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning commercial liability insurance and supplementing chapter 29 of Title 17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Commercial liability insurance policy" means a contract of insurance, issued by an admitted or surplus lines insurer to a contractor or other construction professional, which pays for sums that the insured becomes legally obligated to pay as damages for occurrences of property damage and bodily injury.

"Contractor or other construction professional" means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity engaging in the development, construction, installation, renovation or repair of residential, commercial, or industrial property, buildings or other structures, or improvements related thereto.

2. A commercial liability insurance policy shall not be delivered, issued, executed, or renewed in this State, on or after the effective date of this act, unless the policy contains a definition of occurrence that includes:

a. an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and

b. property damage or bodily injury resulting from faulty workmanship.

3. This act shall not be construed to restrict or limit the nature or types of exclusions from coverage that an insurer includes in a commercial liability insurance policy.

4. This act shall take effect on the 90th day next following enactment.

STATEMENT

This bill requires commercial liability insurance policies to contain a definition of "occurrence" in order to provide more certainty with respect to coverage for faulty workmanship.

This bill provides that a commercial liability insurance policy shall not be delivered, issued, executed, or renewed in this State, on or after the bill's effective date, unless the policy contains 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.

Construction contracts typically require that the general contractor and any subcontractors performing work on a project secure commercial liability insurance that includes coverage for both property damage and bodily injury caused by an occurrence. Notwithstanding that this coverage is most often written on standard form insurance policies, courts have varied in their holdings as to whether damage from faulty workmanship is accidental in nature and therefore within the definition of an occurrence, for which coverage is provided. See, for example, Weedo v. Stone-E-Brick, 81 N.J. 233 (1979), Fireman's Ins. Co. of Newark v. National Union Fire Ins. Co., 387 N.J.Super. 434 (App. Div. 2006), Pennsylvania National Mutual Cas. Ins. Co. v. Parkshore Dev. Corp., 403 Fed. Appx. 770 (3rd Cir. 2010), and Greystone Construction v. National Fire & Marine Insurance Company, 661 F.3d 1272 (10th Cir. 2011).

By providing a definition of occurrence that addresses both accidents and faulty workmanship, the bill is intended to reduce confusion in industry practices by resolving coverage issues arising from the holdings in various court decisions.

The bill also provides that it is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer includes in a commercial liability insurance policy.