**A** **BILL**

TO AMEND ARTICLE 5, CHAPTER 3, TITLE 15 OF THE 1976 CODE, BY ADDING SECTION 15‑3‑645, TO PROVIDE A PROVISION IN AN INSURANCE CONTRACT ISSUED TO A CONSTRUCTION PROFESSIONAL EXCLUDING OR LIMITING 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 A POLICY’S INCEPTION DATE AND CONTINUES, WORSENS, OR PROGRESSES WHILE THE POLICY IS IN EFFECT IS VOID AND UNENFORCEABLE UNLESS THE EXCLUSION OR LIMITATION APPLIES ONLY IF THE INSURED HAD ACTUAL KNOWLEDGE OF THE INJURY OR DAMAGE PRIOR TO THE POLICY’S INCEPTION DATE.

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) For purposes of this section ‘construction professional’ means any person, corporation, or other legal entity regularly engaged in construction related activities necessary in making permanent improvements to real property.

(B) Notwithstanding any other provision of law, a provision in an insurance contract issued to a construction professional excluding or limiting 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 a policy’s inception date and continues, worsens, or progresses while the policy is in effect is void and unenforceable unless the exclusion or limitation applies only if the insured had actual knowledge of the injury or damage prior to the policy’s inception date.

(B) Any provision contained in a policy in violation of this section is void and unenforceable and a court shall construe any policy containing such a provision as if the provision was not a part of the policy when issued.

(C) 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.

(D) In order to deny or refuse to defend a claim against an insured construction professional based upon or arising out of the defective or unsafe condition of an improvement to real property, the insurer must prove by a preponderance of the evidence that:

(1) the policy is not subject to the provisions of subsection (A) because the injury did not occur and did not continue, worsen, or progress during the period of coverage; or

(2) the insured had actual knowledge of the injury or damage prior to the policy’s inception date.”

SECTION 2. 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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