

By: Carona

S.B. No. 868

A BILL TO BE ENTITLED

AN ACT

relating to the operation and regulation of certain consolidated insurance programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Insurance Code, is amended by adding Subtitle C to read as follows:

SUBTITLE C. PROGRAMS AFFECTING MULTIPLE LINES OF INSURANCE

CHAPTER 151. CONSOLIDATED INSURANCE PROGRAMS.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. DEFINITIONS. In this chapter:

(1) "Consolidated insurance program" means a program under which a principal, for a contractor or contractors on construction projects, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects.

(2) "Construction project" means construction, remodeling, maintenance or repair of improvements to real property.

(3) "Contractor" includes:

(A) a prime contractor;

(B) a general contractor;

(C) a subcontractor; and

(D) any other person who receives insurance coverage as an additional insured under an insurance policy or contract subject to this chapter.

1 (4) "Insurance credit" means a discount on a contract
2 price offered to a principal by a contractor bidding on a
3 construction project contract in consideration of the principal
4 providing insurance coverage for the construction project that
5 covers the contractor.

6 Sec. 151.002. PRINCIPAL. (a) For purposes of this chapter,
7 "principal" means the person who procures the insurance contract or
8 policy.

9 (b) The principal under a consolidated insurance program is
10 the person responsible for the payment of the premium on the
11 insurance coverage. The principal is typically the named insured
12 on the insurance contract or policy.

13 Sec. 151.003. MINIMUM SIZE OF CONSTRUCTION PROJECT. To be
14 eligible to use a consolidated insurance program under this
15 chapter, the amount of the contract between the owner and the prime
16 contractor for any construction project must be greater than \$100
17 million, whether the project is a single construction project or is
18 part of a multiple construction project.

19 Sec. 151.004. WAIVER OF GOVERNMENTAL IMMUNITY. (a) In this
20 section, "governmental unit" has the meaning assigned by Section
21 2259.001, Government Code.

22 (b) A governmental unit is liable for damages resulting from
23 negligence by the governmental unit in the procurement or coverage
24 of insurance under a consolidated insurance program.

25 (c) Sovereign immunity to suit is waived and abolished to
26 the extent of the liability created by this section.

27 [Sections 151.005-151.050 reserved for expansion]

1 SUBCHAPTER B. GENERAL REQUIREMENTS FOR A

2 CONSOLIDATED INSURANCE PROGRAM

3 Sec. 151.051. GENERAL REQUIREMENTS. An insurance contract
4 or policy issued under a consolidated insurance program must:

5 (1) provide coverages in the manner required by the
6 department under this code; and

7 (2) comply with the requirements adopted under this
8 chapter.

9 Sec. 151.052. REQUIRED COVERAGES. (a) An insurance policy
10 or contract issued under a consolidated insurance program must
11 provide coverages for all operations that are necessary and
12 incidental to the construction project.

13 (b) The consolidated insurance program must provide
14 professional liability coverage for any errors or omissions
15 regarding any design work or program administrative work, including
16 any safety-related services or drug or substance abuse services
17 that are required of the contractor, with separate limits of
18 liability not less than the limits provided by the program for
19 commercial general liability insurance coverage.

20 (c) Except as provided by Subsection (d), after the award of
21 a construction contract by the principal, the operations or
22 coverages under the consolidated insurance program may not be
23 materially changed or cancelled without written notice provided to
24 the principal and all contractors 60 days prior to the effective
25 date of the material change or cancellation.

26 (d) A notice to cancel coverage due to non-payment of
27 premium shall be effective only after written notice is provided to

1 the principal and all contractors 30 days prior to the effective
2 date of the cancellation due to non-payment of premium.

3 (e) If the operations or coverages under a consolidated
4 insurance program are materially changed or cancelled and not
5 replaced with equivalent operations or coverages, a contractor
6 shall be entitled to:

7 (1) an increase in its construction project contract
8 price to cover the contractor's cost and overhead for procuring
9 insurance to replace the coverage provided by the consolidated
10 insurance program; or

11 (2) cancel its construction project contract without
12 recourse or liability for damage to any person.

13 (f) For purposes of Subsection (e) equivalent operations or
14 coverages includes, where applicable, an insurer that meets the
15 requirements in Sec. 151.060.

16 (g) A contractor that elects to cancel its construction
17 project contract under Subsection (e)(2) shall be entitled to
18 payment for all properly performed labor or properly furnished
19 materials supplied by the contractor to the construction project
20 prior to the effective date of cancellation of its construction
21 project contract.

22 (h) A contractor who submits a price proposal for work on a
23 construction project under a consolidated insurance program is
24 entitled to written notification from the principal or contractor
25 of any material change in the consolidated insurance program by the
26 date that is no less than 7 days prior to the date the contractor
27 executes the contract for work on the construction project.

1 (i) After receipt of notice under Subsection (h) a
2 contractor may withdraw its price proposal for work on the
3 construction project without recourse or liability for damage to
4 any person.

5 Sec. 151.053. COVERAGE OF CONTRACTORS; EFFECT OF SEPARATE
6 COVERAGE. (a) Each contractor on a construction project covered by
7 a consolidated insurance program must be listed as an additional
8 insured on each insurance policy and contract under this program
9 and have equal rights under the policy or contract with the
10 principal and other contractors.

11 (b) The principal or a contractor may not require a
12 contractor to obtain additional insured endorsements on the
13 contractor's separately maintained insurance contracts or policies
14 that are of the same general type as the insurance coverages
15 provided by the consolidated insurance program except for offsite
16 work for ongoing operations related to the project.

17 (c) The coverages under the consolidated insurance program
18 must be primary and non-contributory to any insurance policy or
19 contract separately maintained by a contractor that is of the same
20 general type as the insurance coverages provided by the
21 consolidated insurance program.

22 (d) A contractor covered by a consolidated insurance
23 program shall have standing in any hearing or proceeding involving
24 workers' compensation or liability claims, including any claim
25 adjustment and settlement negotiations, and shall be entitled to
26 representation by legal counsel selected by the contractor and
27 whose expense shall be covered under the consolidated insurance

1 program. The principal shall have the right to approve the legal
2 counsel selected by the contractor, but such approval shall not be
3 unreasonably withheld.

4 Sec. 151.054. COMPLIANCE BY PRINCIPAL. A principal under a
5 consolidated insurance program who does not comply with the
6 requirements of this chapter may not, directly or indirectly,
7 including by deduction from a payment or by requesting an insurance
8 credit, charge a contractor for any insurance coverage provided to
9 the contractor by the program.

10 Sec. 151.055. SUBROGATION. (a) The principal and a
11 contractor do not have subrogation rights against each other for
12 claims covered by the consolidated insurance program.

13 (b) A contractor and another contractor do not have
14 subrogation rights against each other for claims covered by the
15 consolidated insurance program.

16 (c) A waiver of a right of subrogation contained in an
17 insurance policy or contract separately maintained by a contractor
18 that is of the same general type as the insurance coverage provided
19 under the consolidated insurance program is void.

20 Sec. 151.056. LIMITS OF COVERAGE. (a) Subject to Section
21 151.058, aggregate and per-occurrence limits of all insurance
22 coverages under a consolidated insurance program apply to all
23 contractors under the program for the term of each construction
24 project covered by the program.

25 (b) The per-occurrence limit shall be no less than
26 \$100,000,000 for each single construction project or for each
27 construction project that is part of a multiple construction

1 project.

2 (d) The consolidated insurance program must reinstate
3 annually the liability limits for each policy or contract subject
4 to the program.

5 Sec. 151.057. APPLICATION TO GENERAL LIABILITY COVERAGE.

6 If a consolidated insurance program includes general liability
7 coverage, coverage must:

8 (1) be provided for a negligent act of a contractor,
9 whether caused by a direct act of the contractor or assumed under
10 contract;

11 (2) be provided for each product and completed
12 operation of the construction project; and

13 (3) not exclude contractual liability coverage.

14 Sec. 151.058. DURATION OF COVERAGE. A consolidated
15 insurance program that provides coverage of products and completed
16 operations coverage must continue the insurance coverage until the
17 date that is five years from the date on which the construction
18 project is finally complete.

19 Sec. 151.059. NOTICE OF PROPOSED CHANGES IN COVERAGE
20 REQUIRED. (a) An insurer shall provide to the principal and each
21 contractor covered under a consolidated insurance program a notice
22 of any change, cancellation of coverage, or refusal to renew
23 coverage under the insurance policies or contracts subject to the
24 consolidated insurance program.

25 (b) Except as provided by Subsections (c) and (d), a
26 proposed change described under Subsection (a) does not take effect
27 until the expiration of the 30th day after the date on which the

1 principal and each contractor receive the notice required by
2 Subsection (a).

3 (c) A proposed change regarding a cancellation of coverage
4 or a refusal to renew coverage does not take effect until the
5 expiration of the 60th day after the date on which the principal and
6 each contractor receive the notice required by Subsection (a).

7 (d) If the operations or coverages under a consolidated
8 insurance program are materially changed or cancelled and not
9 replaced with equivalent operations or coverages, a contractor
10 shall be entitled to:

11 (1) an increase in its construction project contract
12 price to cover the contractor's cost and overhead for procuring
13 insurance to replace the coverage provided by the consolidated
14 insurance program; or

15 (2) cancel its construction project contract without
16 recourse or liability for damage to any person.

17 Sec. 151.060. INSURER REQUIREMENTS; INSURER RATINGS. (a)
18 All insurance coverages under a consolidated insurance program must
19 be provided by an insurer that has:

20 (1) a financial strength rating of at least A- and a
21 financial size rating of at least Class XIII, as currently reported
22 by the A.M. Best Company; or

23 (2) an equivalent rating made by a similar rating
24 organization recognized by the commissioner.

25 (b) The requirements in Subsection (a) must be maintained
26 for the duration of the construction project.

27 Sec. 151.061. BONDS. (a) A consolidated insurance program

1 may not provide a performance bond or payment bond for any
2 contractor.

3 (b) Subsection (a) does not prohibit the specifications for
4 a construction project from including requirements for bonds that
5 must be obtained directly by the contractor.

6 Sec. 151.062. INDEMNIFICATION. A contractor may not be
7 required to indemnify, hold harmless, or defend any claim for any
8 action assumed under a contract on a construction project covered
9 by a consolidated insurance program under which the contractor is a
10 participant, that exceeds the insurance liability limits under the
11 consolidated insurance program and any such requirement in a
12 construction project contract covered by a consolidated insurance
13 program is void.

14 (b) On a construction project covered by a consolidated
15 insurance program, the consolidated insurance program must provide
16 liability insurance to cover the indemnity obligation of a
17 contractor insured under the consolidated insurance program.

18 Sec. 151.062A. DEFENSE COVERAGE FOR CLAIM OR SUIT. (a)
19 Except as provided in Subsection (b), in the event of a claim or
20 lawsuit that is covered by the consolidated insurance program, the
21 insurance policy or contract shall provide for the defense of each
22 contractor with the defense to be conducted by legal counsel
23 selected by each contractor. The principal shall have the right to
24 approve the legal counsel selected by the contractor, but such
25 approval shall not be unreasonably withheld.

26 (b) Subsection (a) shall not apply if:

27 (1) the insurance carrier unconditionally agrees to

1 defend and indemnify the contractor; and

2 (2) after application of all per occurrence and
3 aggregate limits, including any unpaid pending claims, there is
4 sufficient coverage to satisfy the full amount of the claim or
5 lawsuit.

6 Sec. 151.063. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR
7 PENALTIES. (a) A principal shall pay:

8 (1) any coverage deductibles or losses in a
9 retrospective rating plan or other loss-sensitive rating plan under
10 a consolidated insurance program;

11 (2) any penalties incurred under the program; and

12 (3) all deductibles applicable to any policy provided
13 under the consolidated insurance program, except as provided under
14 Subsection (b).

15 (b) A principal may not assess a contractor covered under
16 the program for a deductible, loss, or penalty described by
17 Subsection (a), except for a bodily injury or property damage claim
18 deductible if:

19 (1) the action of the contractor caused the bodily
20 injury or property damage claim; and

21 (2) the insurance carrier assesses the deductible
22 against the principal.

23 (c) The limit of the deductible assessed to the contractor
24 under Subsection (b) shall be the lesser of:

25 (1) the amount the insurance carrier assesses the
26 principal; or

27 (2) \$2,500.

1 Sec. 151.064. PREMIUMS ASSESSED TO CONTRACTOR. If any
2 premiums for coverage under a consolidated insurance program are
3 assessed to a contractor, either directly or as an insurance credit
4 against a contract price:

5 (1) the contractor shall share in any dividends or
6 refunds received from the insurer by the owner or contractor on a
7 pro rata basis based on premiums;

8 (2) for a single construction project covered under
9 the consolidated insurance program, the contractor's most recent
10 experience modifier, as of the date on which the construction
11 project begins, must be used in the computation of the premium to be
12 assessed to the contractor until the completion of that project;

13 (3) for multiple construction projects covered under
14 the consolidated insurance program, the contractor's most recent
15 experience modifier may be used for a contractor at the beginning of
16 each individual construction project and shall be used for the
17 duration of each individual project;

18 (4) the amount of the premium assessed to the
19 contractor must be reduced by 10 percent to compensate the
20 contractor for the increased cost of administration associated with
21 the consolidated insurance program.

22 Sec. 151.064A. PAYMENT OF DIVIDENDS OR REFUNDS; INTEREST
23 DUE. (a) Any dividend or premium refund due under section 151.064
24 shall be paid or credited to each entitled contractor no later than
25 the 14th day after payment or credit is issued by the insurance
26 carrier.

27 (b) A dividend or premium refund not paid in accordance with

1 subsection (a) shall bear interest at the rate of 1-1/2 per cent per
2 month from the date of credit or payment by the carrier until the
3 date of payment in full to the contractor entitled to the payment.

4 (c) A dividend or premium refund received by or credited to
5 a principal shall constitute trust funds to be held by the principal
6 and shall be subject to Subchapter B, Chapter 162, Property Code.

7 Sec. 151.065. AUDIT REQUIREMENTS. Any audit of a
8 contractor covered by a consolidated insurance program who is
9 subject to a premium charge for the coverage must be completed not
10 later than the 45th day after the date on which the contractor
11 substantially completes the work performed by the contractor on the
12 construction project.

13 Sec. 151.066. DATA REPORTS. (a) The program
14 administrator, insurer, or the principal shall report general
15 liability and workers' compensation loss and premium data in detail
16 to:

17 (1) each contractor at least monthly; and

18 (2) the appropriate rating bureau annually not later
19 than the 60th day after the ending date of the experience rating
20 period of each contractor, with a final report not later than the
21 60th day after the completion date of the construction project.

22 (b) The initial report under Subsection (a)(1) must be sent
23 not later than the 30th day after the date on which work begins on
24 the construction project, with subsequent monthly reports sent not
25 later than the 15th day of the month following the month covered by
26 the report.

27 (c) A report under Subsection (a)(2) must include data that

1 has been corrected after the investigation of any discrepancies
2 reported by a contractor.

3 (d) On written notice of any erroneous information
4 submitted to a rating bureau, the program administrator, insurer,
5 or principal shall notify the rating bureau of the correct
6 information. Failure to correct an erroneous report not later than
7 the 30th day after the date on which the written notice is received
8 by the principal subjects the principal to liability for any
9 damages that result from the erroneous information, and to
10 exemplary damages as may be just and equitable resulting from the
11 principal's breach of its fiduciary duty to each contractor.

12 [Sections 151.067-151.100 reserved for expansion]

13 SUBCHAPTER C. DISCLOSURE REQUIREMENTS FOR ADMINISTRATION OF A
14 CONSOLIDATED INSURANCE PROGRAM

15 Sec. 151.101. REQUIRED DISCLOSURE AT BID SOLICITATION. At
16 the time a principal or contractor is soliciting bids for a
17 construction project, the principal or contractor must disclose in
18 the project plans or specifications that the project will be
19 covered by a consolidated insurance program subject to this
20 chapter.

21 Sec. 151.102. GENERAL ELEMENTS OF BID SOLICITATION
22 DISCLOSURE. Each disclosure made under Section 151.101 must
23 include:

24 (1) the scope of coverage and limits for each
25 insurance policy or contract under the consolidated insurance
26 program, including an accurate specimen copy of full and complete
27 declarations, policy conditions, limitations, coverages, and

1 endorsements;

2 (2) the scope of coverage and limits for each policy or
3 contract of excess insurance covering the consolidated insurance
4 program, including an accurate specimen copy of full and complete
5 declarations, policy conditions, limitations, coverages, and
6 endorsements; and

7 (3) a complete description of the safety program
8 required by Subchapter D.

9 Sec. 151.101A. REQUIRED DISCLOSURE PRIOR TO CONTRACT
10 EXECUTION. Not less than 5 days prior to the time a principal or
11 contractor executes a contract for a construction project covered
12 by a consolidated insurance program, the principal or contractor
13 must make a written disclosure to the contractor that contains
14 detailed information concerning the consolidated insurance
15 program.

16 Sec. 151.101B. GENERAL ELEMENTS OF PRE-CONTRACT
17 DISCLOSURE. Each disclosure made under Section 151.101A must
18 include:

19 (1) the name and address of each insurer providing an
20 insurance policy or contract under the consolidated insurance
21 program and identification of the coverage each insurer will
22 provide;

23 (2) the name, address, and telephone number of the
24 insurance producer, if any, acting as agent for the insurer;

25 (3) the name of the primary contact person of the
26 insurance producer for the consolidated insurance program;

27 (4) the name, street address, city, state, and zip

1 code, and the name of the employer, if any, of any person who
2 receives a commission or fee for the placement of any insurance
3 policy or contract that is part of the consolidated insurance
4 program, and the amount or means of calculation of such commission
5 or fee;

6 (5) a copy of each form, including enrollment forms,
7 claim forms, and payroll forms, that a contractor may be required to
8 submit to the principal, program administrator, or insurer; and

9 (6) a detailed description of any differences in the
10 items disclosed under Section 151.102 and the actual scope and
11 limits of coverage for the consolidated insurance program,
12 including any deviations from the specimen copy provided.

13 Sec. 151.103. FORMULA FOR INSURANCE CREDITS. (a) The
14 disclosure required under Section 151.101 must include the formula
15 to be used by a contractor in computing any insurance credits.

16 (b) The formula must include:

17 (1) the discounts, credits, and rate variances used by
18 the contractor;

19 (2) examples of credit computations;

20 (3) a method to incorporate any scheduled credits,
21 premium discounts, or other items of credit or discount that apply
22 specifically to the contractor; and

23 (4) a method to allow contractor that loses premium
24 volume discounts under its separately maintained insurance program
25 due to its participation in the consolidated insurance program to
26 offset such lost discounts against any premium assessed to the
27 contractor for the consolidated insurance program.

1 (c) A principal may not require an insurance credit of a
2 contractor for flat rate coverages maintained by the contractor.

3 Sec. 151.104. CONTRACT AWARD; BASIS. (a) The disclosure
4 required under Section 151.101 must state the basis on which the
5 principal will award the contract, including a specific explanation
6 of how any premium overruns or underruns will be applied and whether
7 the contract award will be made one basis that

8 (1) excludes the cost of insurance coverages; or

9 (2) includes the cost of insurance coverage.

10 (b) A contractor awarding a contract to another contractor
11 must use the basis described under Subsection (a) for any
12 contractor insured under the consolidated insurance program.

13 Sec. 151.105. INJURED EMPLOYEES. The disclosure required
14 under Section 151.101. must fully describe any light duty
15 return-to-work program required for a contractor's injured
16 employees. A return-to-work program must include a formula under
17 which the reasonable compensation due the contractor for the lost
18 productivity of the light duty employee may be computed.

19 [Sections 151.106-151.150 reserved for expansion]

20 SUBCHAPTER D. SAFETY PROGRAM

21 Sec. 151.151. SAFETY PROGRAM REQUIRED. (a) A principal
22 shall adopt a comprehensive, professionally developed safety
23 program designed to reduce the frequency and severity of worker
24 injuries. The principal shall require participation in the safety
25 program by all persons working on the construction project.

26 (b) The safety program must include a program for detection
27 of drug use and other substance abuse.

1 (c) A qualified third-party safety company may administer
2 and operate a safety program required under this section.

3 Sec. 151.152. SAFETY PROFESSIONALS. (a) For every 100
4 workers on the construction project, a safety program conducted
5 under this subchapter must have at least one qualified safety
6 professional who works not less than 40 hours weekly at the work
7 site of the construction project.

8 (b) To be qualified to serve as a safety professional under
9 Subsection (a), a person must have demonstrable knowledge of Title
10 29, Code of Federal Regulations, and related regulations adopted by
11 the federal Occupational Safety and Health Administration and:

12 (1) hold a bachelor of science degree conferred by an
13 accredited institution of higher education, with a major in safety
14 engineering, industrial hygiene, or a related field; or

15 (2) hold a current certification as a certified safety
16 professional issued by an entity recognized by the commissioner; or

17 (3) have at least eight years of primary safety
18 responsibility experience in the construction industry.

19 [Sections 151.153-151.200 reserved for expansion]

20 SUBCHAPTER E. PROGRAM ADMINISTRATION

21 Sec. 151.201. PROGRAM ADMINISTRATOR. (a) Each principal
22 shall appoint a qualified administrator for the consolidated
23 insurance program whose only duty is administration of the program.

24 (b) To be eligible to serve as the program administrator, a
25 person must:

26 (1) hold a risk manager license under Chapter 4153, a
27 general property and casualty agent license under Chapter 4051, or

1 another license as an insurance professional that is:

2 (A) recognized as appropriate by the
3 commissioner; and

4 (B) issued under Title 13; and

5 (2) have been licensed under this code for at least the five
6 years preceding the date of the appointment as program
7 administrator.

8 Sec. 151.202. POWERS AND DUTIES OF PROGRAM ADMINISTRATOR;
9 RELATIONSHIP WITH CONTRACTORS; RULES. (a) Each program
10 administrator shall ensure that the administrator's clients comply
11 with the requirements of this chapter. For purposes of this
12 subsection, each contractor on the construction project is
13 considered a client of the program administrator.

14 (b) The Commissioner shall adopt rules as necessary to
15 enforce this section and may impose sanctions under Chapter 82 for a
16 violation of this section by a program administrator. Sanctions
17 under this subsection may include revocation of the license held by
18 the program administrator under this code.

19 Sec.151.203. CONTRACTOR AS BENEFICIARY. For purposes of
20 insurance benefits under the consolidated insurance program, each
21 contractor is considered a beneficiary of the administrator and the
22 administrator shall owe a fiduciary duty to each contractor that
23 participates in the program.

24 SECTION 2. Chapter 151, Insurance Code, as added by this
25 Act, applies only to an insurance policy or contract delivered,
26 issued for delivery, or renewed on or after January 1, 2006. A
27 policy or contract delivered, issued for delivery, or renewed

S.B. No. 868

1 before January 1, 2006, is governed by the law as it existed
2 immediately before the effective date of this Act, and that law is
3 continued in effect for that purpose.

4 SECTION 3. This Act takes effect September 1, 2005.