

By: Smithee

H.B. No. 3759

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) "Administrator" means a person who operates and manages a consolidated insurance program on behalf of a principal. The term includes a person who, in the regular course of business, operates and manages a consolidated insurance program as an agent of a principal.

(2) "Consolidated insurance program" means a program under which a principal, for a contractor or contractors on a construction project, provides general liability insurance coverage, workers' compensation insurance coverage, or both that are incorporated into an insurance program for a single construction project or multiple construction projects.

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

1 (4) "Construction project site" means the immediate
2 construction location and areas emanating from that location, such
3 as adjacent sidewalks, streets, storage areas, temporary
4 construction yards, and staging areas.

5 (5) "Contractor" includes:
6 (A) a prime contractor;
7 (B) a general contractor;
8 (C) a subcontractor; and
9 (D) any other person who has signed a
10 construction contract covered under the consolidated insurance
11 program.

12 (6) "Insurer" means an insurance company, including a
13 mutual insurance company or a capital stock company, a reciprocal
14 or interinsurance exchange, a Lloyd's plan, or another legal entity
15 authorized to engage in the business of general liability insurance
16 or workers' compensation insurance in this state. The term
17 includes an eligible surplus lines insurer.

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

21 (b) The principal under a consolidated insurance program is
22 the person responsible for the payment of the premium on the
23 insurance coverage. The principal is typically the first named
24 insured on a general liability insurance contract or policy.

25 Sec. 151.003. RULES. The commissioner shall adopt rules in
26 the manner provided by Subchapter A, Chapter 36, as necessary to
27 implement and enforce the purpose and intent of this chapter.

1 [Sections 151.004-151.050 reserved for expansion]

2 SUBCHAPTER B. GENERAL REQUIREMENTS

3 Sec. 151.051. COVERAGE OF CONTRACTORS. (a) Each
4 contractor on a construction project covered by a consolidated
5 insurance program must:

6 (1) be listed as a named insured on each insurance
7 policy and contract under the program; and

8 (2) have equal rights under the policy or contract
9 with the principal and other contractors, subject to insurance
10 industry standard differences between a first-named insured and a
11 named insured.

12 (b) Subsection (a) does not apply to a policy or contract
13 that is issued individually in the name of the contractor as the
14 first-named insured under a consolidated insurance program.

15 (c) The principal or a contractor may not require a
16 contractor to obtain an additional insured endorsement on the
17 contractor's separately maintained insurance policy that is of the
18 same general type as the insurance coverage provided by the
19 consolidated insurance program other than an insurance policy or
20 contract covering off-site work for ongoing operations that is
21 related to the project and that is not covered by the consolidated
22 insurance program.

23 (d) The coverages under the consolidated insurance program
24 must be primary and noncontributory to any insurance policy
25 separately maintained by a contractor covered by the consolidated
26 insurance program that is of the same general type as the insurance
27 coverages provided by the consolidated insurance program.

1 Sec. 151.052. DURATION OF GENERAL LIABILITY COVERAGE;
2 CERTAIN COVERAGE REQUIRED. (a) A consolidated insurance program
3 that provides completed operations insurance coverage together
4 with general liability coverage must continue completed operations
5 insurance coverage until the expiration of the limitations period
6 for bringing an action for damages under Section 16.009, Civil
7 Practice and Remedies Code.

8 (b) A contractor's separately maintained insurance policy
9 may not exclude coverage for ongoing operations of the contractor
10 for warranty or punch-out work on a construction project covered by
11 a consolidated insurance program that occurs after the contractor
12 has received written notice from the principal, insurer, or
13 administrator that the contractor's coverage under the
14 consolidated insurance program has ended.

15 (c) A consolidated insurance program must provide coverage
16 for:

17 (1) ongoing operations of the contractor for warranty
18 or punch-out work on a construction project covered by the
19 consolidated insurance program; and

20 (2) preconstruction services and initial construction
21 work related to the project.

22 (d) A consolidated insurance program must provide completed
23 operations coverage for specially fabricated materials or
24 equipment if the installer of the fabricated materials or equipment
25 is covered under the program and fabricated the materials or
26 equipment.

27 Sec. 151.053. NOTICE OF CERTAIN CHANGES. (a) Except as

1 provided by Subsection (b), after the execution of a construction
2 contract by the principal, the coverages or limits under the
3 consolidated insurance program may not be reduced, nonrenewed, or
4 canceled without written notice provided to the principal and all
5 contractors. The notice required under this subsection must be
6 provided by the insurer or administrator not later than the 60th day
7 before the effective date of the reduction, nonrenewal, or
8 cancellation.

9 (b) A notice to cancel coverage due to nonpayment of premium
10 is effective only after written notice is provided to the principal
11 at least 10 days before the scheduled effective date of the
12 cancellation due to nonpayment of premium.

13 (c) If any coverage is canceled, the insurer or
14 administrator shall notify each contractor in writing that coverage
15 has been canceled. The notice under this subsection must be sent
16 not later than the effective date of the cancellation of coverage.

17 Sec. 151.054. NOTICE REGARDING REDUCTION IN LIMIT. (a) The
18 insurer shall notify all contractors in writing not later than the
19 10th day after the date the total limit of coverage for any type of
20 liability coverage issued under the consolidated insurance program
21 is reduced by:

22 (1) 50 percent; and
23 (2) each additional 25 percentage point reduction
24 after the initial 50 percent reduction.

25 (b) The reduction in the limit under Subsection (a) shall be
26 computed based on incurred losses and expenses.

27 (c) The notice under Subsection (a) must describe:

1 (1) the initial limit of liability coverage; and
2 (2) the limit of liability coverage that remains as of
3 the notice date.

4 (d) If the limits of a policy have been expended, triggering
5 the limits of another policy, the notice under Subsection (a) is
6 required only if the combined limit of all policies providing the
7 coverage has been reached.

8 Sec. 151.055. INSURER REQUIREMENTS; INSURER RATINGS. (a)
9 All insurance coverages under a consolidated insurance program for
10 a construction project must be provided by an insurer that has:

11 (1) a financial strength rating of at least A- and a
12 financial size rating of at least Class VII, as currently reported
13 by the A. M. Best Company; or

14 (2) an equivalent rating made by a similar rating
15 organization recognized by the commissioner.

16 (b) Insurance policies providing coverage under the
17 consolidated insurance program shall be delivered to the
18 first-named insured not later than the 60th day after the date on
19 which the coverage takes effect.

20 (c) The requirements of this section must be maintained for
21 the duration of the construction project.

22 Sec. 151.056. DUTY AND COMPLIANCE BY PRINCIPAL. A
23 principal under a consolidated insurance program owes a duty to
24 each contractor covered under the consolidated insurance program to
25 comply with the requirements of this chapter.

26 Sec. 151.057. LIMITED EXCEPTION TO RATING STANDARDS.
27 Sections 2053.002 and 2251.052, Insurance Code, and Section 1,

Chapter 50 (H.B. 32), Acts of the 53rd Legislature, Regular Session, 1953 (Article 5.77, Vernon's Texas Insurance Code), do not apply to rates used for an insurance policy issued under a consolidated insurance program under this chapter to the extent that those laws require an insurer to produce rates for individual risks.

[Sections 151.058-151.100 reserved for expansion]

SUBCHAPTER C. COVERAGE LIMITS

Sec. 151.101. GENERAL REQUIREMENTS. Subject to Section 151.052, aggregate and per-occurrence limits of all general liability insurance and employer liability coverages under a consolidated insurance program apply collectively to all contractors under the program for the duration of each construction project covered by the program.

Sec. 151.102. LIMITS. (a) Except as provided by Subsection (b), (c), or (d), for a construction project the general liability limit must be not less than:

(1) \$25 million, if the construction value is \$40 million or less;

(2) \$75 million, if the construction value is more than \$40 million but no more than \$100 million;

(3) \$150 million, if the construction value is more than \$100 million but no more than \$250 million; and

(4) the lesser of \$250 million or 50 percent of the construction value, if the construction value is more than \$250 million.

(b) For a construction project covered by a rolling

consolidated insurance program, the general liability limit must not be less than:

(1) \$40 million, if the construction value is \$40 million or less;

(2) \$75 million, if the construction value is more than \$40 million but no more than \$100 million;

(3) \$125 million, if the construction value is more than \$100 million but no more than \$250 million; and

(4) the lesser of \$375 million or 50 percent of the construction value, if the construction value is more than \$250 million.

(c) For purposes of computing the required coverage for a rolling consolidated insurance program under Subsection (b), the construction value may be reduced by the value of a construction project that has dedicated liability limits and is operated under the rolling consolidated insurance program.

(d) For purposes of computing the required coverage for a rolling consolidated insurance program under Subsection (b), if a single construction project operated under a rolling consolidated insurance program has a construction value of more than \$100 million, the single construction project must have a dedicated limit of \$75 million or more.

(e) For employer liability coverage under a consolidated insurance program, the per-occurrence liability limit may not be less than the applicable general liability limit. Any umbrella or excess policy limits must extend to employer liability coverage.

(f) Construction projects solely for the construction of

single-family homes, duplexes, triplexes, or quadraplexes must have a general liability limit of \$5 million or more.

[Sections 151.103-151.150 reserved for expansion]

SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR

ADMINISTRATION OF CONSOLIDATED INSURANCE PROGRAM

Sec. 151.151. REQUIRED DISCLOSURE AT BID SOLICITATION.

(a) At the time a principal or contractor is soliciting bids for a construction project, the principal or contractor must disclose prominently in the project specifications, or in any request for bids or proposals, that the project may be covered by a consolidated insurance program subject to this chapter.

(b) The disclosure must be sufficient to:

(1) allow the bidder to compare the bidder's own insurance program with the coverages, limits, and operation of the insurance provided under the consolidated insurance program; and

(2) to accurately predict the credits, deductibles, or other costs to the bidder associated with the program.

Sec. 151.152. REQUIRED PRECONTRACT DISCLOSURE. Not later than the 14th day before the date on which a principal or contractor executes a contract for a construction project covered by a consolidated insurance program, the principal or contractor that solicited the bid must make a written disclosure to the contractor that contains detailed information concerning the consolidated insurance program.

[Sections 151.153-151.200 reserved for expansion]

SUBCHAPTER E. PROGRAM ADMINISTRATION

Sec. 151.201. ADMINISTRATOR. Each principal shall appoint

1 a qualified administrator for the consolidated insurance program
2 whose primary duty is administration of the program.

3 Sec. 151.202. POWERS AND DUTIES OF ADMINISTRATOR. (a) An
4 administrator shall comply in a timely manner with the requirements
5 of this section.

6 (b) The administrator shall administer the enrollment of
7 all contractors covered by the consolidated insurance program as
8 necessary to ensure prompt coverage, effective on the date that the
9 contractor begins work on the construction project.

10 (c) The administrator shall:

11 (1) maintain a current consolidated insurance program
12 manual that contains a detailed description of the consolidated
13 insurance program;

14 (2) provide all contractors with a current copy of the
15 manual that is consistent with the insurance provided and the scope
16 of the program:

17 (A) on the date of the contractor's enrollment in
18 the program; and

19 (B) not later than the seventh day after any
20 changes are made to the manual; and

21 (3) provide each contractor on the date of the
22 contractor's enrollment in the program with a certificate that
23 evidences the contractor's coverage under the program.

24 (d) In addition to the certificate provided under
25 Subsection (c)(3), the administrator shall obtain from the insurer
26 or a licensed agent of the insurer and deliver a certificate of
27 insurance on behalf of a contractor to evidence the coverages and

limits provided by the consolidated insurance program not later than the fifth day after receipt of a request from a contractor.

(e) If the insurer has issued insurance policies, the administrator shall ensure that each contractor receives insurance policies, or renewal certificates for previously issued policies, for all coverages provided by the consolidated insurance program not later than the earlier of:

(1) the 30th day after the date the contractor is enrolled in the program; or

(2) the date the contractor begins work on the project.

(f) The administrator shall coordinate:

(1) any regular reporting required of the contractors and any audits required of the contractors;

(2) all meetings with the insurer, whether with the principal, the contractors, or other parties; and

(3) availability of any on-site medical facilities or other mandatory initial medical care providers and contact information for contractors.

(g) The administrator shall establish and disseminate to contractors:

(1) clear procedures for proper filing of claims; and

(2) required loss-control procedures.

(h) The administrator shall ensure that:

(1) all insurance coverages provided by the consolidated insurance program are maintained; and

(2) all contractors are notified in writing promptly

1 of any changes or cancellation in coverages provided by the
2 consolidated insurance program.

3 (i) The administrator shall monitor the financial standing
4 of the insurer as provided by Section 151.055 and shall provide
5 written notice to the principal and all contractors of any
6 significant negative change not later than the 10th day after the
7 date of the negative change. This subsection may not be interpreted
8 to mean that the principal or administrator is a guarantor of the
9 insurer's obligations under an insurance policy.

10 (j) The administrator shall prepare and present to a
11 contractor on at least a bimonthly basis any required payroll
12 reports, claim reviews, and loss-control reviews that relate to
13 that contractor.

14 (k) The administrator shall provide oversight and
15 management of claims for the principal and any affected contractor
16 until the construction project is completed and the operation of
17 the consolidated insurance program and the administration of that
18 program is closed.

19 (l) Before the date on which the operation of the
20 consolidated insurance program and administration of the program
21 is closed, the administrator shall provide to the principal and
22 each contractor a written notice that contains the contact person's
23 name, company name, mailing address, telephone number, fax number,
24 and e-mail address, and any other necessary contact information of
25 the person and company responsible for any closed, open, or future
26 claims under the coverages provided by the consolidated insurance
27 program.

1 Sec. 151.203. DUTY OF ADMINISTRATOR. For purposes of this
2 chapter and insurance benefits under the consolidated insurance
3 program, the administrator owes a duty to each contractor that
4 participates in the program to comply with the requirements of this
5 chapter.

6 Sec. 151.204. ERRORS AND OMISSIONS COVERAGE REQUIRED. The
7 administrator shall maintain errors and omissions insurance
8 coverage in the minimum amount of \$5 million per occurrence for any
9 liability of the administrator under this chapter.

10 [Sections 151.205-151.250 reserved for expansion]

11 SUBCHAPTER F. ENFORCEMENT PROVISIONS

12 Sec. 151.251. GENERAL ENFORCEMENT; ADMINISTRATIVE
13 PENALTIES. The commissioner may impose a sanction under Chapter
14 82, issue a cease and desist order under Chapter 83, or assess an
15 administrative penalty under Chapter 84 on any person regulated by
16 the department who violates this chapter or a rule or order adopted
17 by the commissioner under this chapter.

18 [Sections 151.252-151.300 reserved for expansion]

19 SUBCHAPTER G. VENUE

20 Sec. 151.301. VENUE. Venue for a suit brought under this
21 chapter is in the county in which the construction project is
22 located.

23 SECTION 2. Chapter 151, Insurance Code, as added by this
24 Act, applies only to a consolidated insurance program for a
25 construction project that begins on or after January 1, 2010. A
26 consolidated insurance program for a construction project that
27 begins before January 1, 2010, is governed by the law as it existed

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1 immediately before the effective date of this Act, and that law is
2 continued in effect for that purpose.

3 SECTION 3. This Act takes effect September 1, 2009.