

By: Carona

S.B. No. 1551

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 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, including the immediate construction location and areas incidental and necessary to the work as defined in a construction

1 document. A construction project under this chapter does not
2 include a single-family home, duplex, triplex, or quadruplex.

3 (4) "Contractor" means a person enrolled in the
4 consolidated insurance program who has entered into a construction
5 contract or a professional services contract.

6 (5) "Insurer" means an insurance company, including a
7 mutual insurance company or a capital stock company, a reciprocal
8 or interinsurance exchange, a Lloyd's plan, or another legal entity
9 authorized to engage in the business of general liability insurance
10 or workers' compensation insurance in this state. The term
11 includes an eligible surplus lines insurer.

12 (6) "Principal" means the person who procures the
13 insurance contract or policy and who is typically the first-named
14 insured on a general liability insurance contract or policy.

15 Sec. 151.002. RULES. The commissioner shall adopt rules in
16 the manner provided by Subchapter A, Chapter 36, as necessary to
17 implement and enforce the purpose and intent of this chapter.

18 [Sections 151.003-151.050 reserved for expansion]

19 SUBCHAPTER B. GENERAL REQUIREMENTS

20 Sec. 151.051. COVERAGE OF CONTRACTORS. (a) Each
21 contractor on a construction project covered by a consolidated
22 insurance program must:

23 (1) be included as a named insured on each insurance
24 policy under the program; and

25 (2) have equal rights under the policy with the
26 principal and other contractors, subject to insurance industry
27 standard differences between a first-named insured and a named

1 insured.

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

5 (c) The principal or a contractor may not require, by
6 contract or otherwise, another contractor to obtain an additional
7 insured endorsement on the other contractor's separately
8 maintained insurance policy with respect to a construction project
9 covered under a consolidated insurance program that is of the same
10 type of insurance coverage as the insurance coverage provided to
11 the other contractor by the consolidated insurance program, other
12 than an insurance policy covering offsite work for ongoing
13 operations related to the project and not covered by the
14 consolidated insurance program. Such a requirement is void and
15 unenforceable.

16 (d) The coverages under the consolidated insurance program
17 must be primary and noncontributory to any insurance policy
18 separately maintained by a contractor covered by the consolidated
19 insurance program that is of the same general type as the insurance
20 coverages provided by the consolidated insurance program.

21 Sec. 151.052. DURATION OF GENERAL LIABILITY COVERAGE;
22 CERTAIN COVERAGE REQUIRED. (a) Except as provided by Subsection
23 (b), a consolidated insurance program that provides completed
24 operations insurance coverage separate from or together with
25 general liability coverage must continue completed operations
26 insurance coverage until the expiration of the limitations period
27 for bringing an action for damages under Section 16.009, Civil

1 Practice and Remedies Code.

2 (b) A consolidated insurance program may not provide
3 completed operations insurance coverage for a period shorter than
4 the limitations period under Section 16.009, Civil Practice and
5 Remedies Code, unless the commissioner determines that the coverage
6 is not available in the insurance market. If the commissioner
7 determines that the coverage is not available, the commissioner
8 shall determine the maximum period that the coverage is available,
9 and the consolidated insurance program must provide coverage for
10 that period. The commissioner shall make a determination under
11 this subsection by rule as the commissioner finds necessary or on a
12 request of an insurer, administrator, or principal.

13 (c) A consolidated insurance program must include premises
14 liability coverage, for 18 months after the date of substantial
15 completion of the construction project, for ongoing operations for
16 the contractor's warranty work, remedial work, or other work on a
17 construction project covered by the consolidated insurance
18 program.

19 (d) A contractor's separately maintained insurance policy
20 must include coverage for ongoing operations of the contractor for:

21 (1) preconstruction services and initial construction
22 work related to the project performed prior to the date of coverage
23 for the contractor under the consolidated insurance program; and

24 (2) warranty work, remedial work, or other work on a
25 construction project covered by a consolidated insurance program
26 that occurs after the coverage required under Subsection (c) has
27 ended.

1 (e) The consolidated insurance program must provide
2 completed operations coverage for specially fabricated materials
3 or equipment if the installer of the fabricated materials is
4 covered under the program and fabricated the materials or
5 equipment.

6 Sec. 151.053. NOTICE OF CERTAIN CHANGES. (a) Except as
7 provided by Subsection (g), the insurer may not reduce coverage,
8 nonrenew coverage, or cancel coverage, or change the limits under a
9 consolidated insurance program except for:

10 (1) nonpayment of premium;

11 (2) failure to comply with safety standards required
12 by the program;

13 (3) failure of the principal to disclose relevant and
14 material information on the date on which the parties entered the
15 contract for the consolidated insurance program; or

16 (4) the provision of materially misleading or false
17 information to an insurer before the date on which the parties
18 entered the contract for the consolidated insurance program.

19 (b) Except as provided by Subsection (c), after work covered
20 by the consolidated insurance program has begun, the coverages or
21 limits under the consolidated insurance program may not be reduced,
22 nonrenewed, or canceled under Subsection (a) without written notice
23 provided to the principal and all contractors. The notice required
24 under this subsection must be provided by the insurer or
25 administrator not later than the 60th day before the effective date
26 of the reduction, nonrenewal, or cancellation.

27 (c) A notice to cancel coverage due to nonpayment of premium

1 is effective only after written notice is provided to the principal
2 and all contractors at least 10 days before the scheduled effective
3 date of the cancellation due to nonpayment of premium.

4 (d) The insurer or administrator shall notify each
5 contractor in writing if any coverage or limit is reduced,
6 nonrenewed, or canceled. The notice under this subsection must be
7 sent not later than the effective date of the reduction,
8 nonrenewal, or cancellation of coverage.

9 (e) If an insurer fails to comply with this section, a
10 reduction, nonrenewal, or cancellation is not effective until the
11 insurer complies with this section.

12 (f) If the insurer gives notice of cancellation based on one
13 of the grounds listed in Subdivision (a)(1) or (a)(2), the
14 principal shall have a reasonable opportunity to pay the premium
15 due or to fulfill the principal's obligation under the consolidated
16 insurance program.

17 (g) This section does not apply to a reduction in limits due
18 to an insurer incurring losses or expenses for a claim made under
19 the policy.

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

25 (1) 50 percent; and
26 (2) each additional 25 percentage point reduction
27 after the initial 50 percent reduction.

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

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

4 (1) the initial limit of liability coverage; and

5 (2) the limit of liability coverage that remains as of
6 the notice date.

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

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

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

17 (2) an equivalent rating made by a similar rating
18 organization recognized by the commissioner.

19 (b) Insurance policies providing coverage under the
20 consolidated insurance program shall be delivered to the
21 first-named insured not later than the 30th day after the date on
22 which the coverage takes effect.

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

25 Sec. 151.056. DUTY AND COMPLIANCE BY PRINCIPAL. (a) A
26 principal under a consolidated insurance program owes a duty to
27 each contractor covered under the consolidated insurance program to

1 comply with the requirements of this chapter.

2 (b) The duty includes:

3 (1) paying the premium for the insurance coverage; and

4 (2) securing replacement insurance that meets the
5 requirements of this chapter, or reimbursing an enrolled contractor
6 for the cost of replacement insurance that meets the requirements
7 of this chapter, if the insurer of the consolidated insurance
8 program fails to provide the coverage under the program.

9 Sec. 151.057. CONTRACTOR INSURANCE. This chapter, or a
10 requirement of a contract entered into under this chapter, may not
11 be construed as preventing a contractor from obtaining any
12 insurance coverage not provided by the consolidated insurance
13 program to protect the contractor or the construction project.

14 Sec. 151.058. INDEMNITY AND SUBROGATION. (a) Rights under
15 an indemnity or hold harmless provision between a principal and
16 contractor or between contractors for claims or events insured
17 under a consolidated insurance program are limited to rights to
18 recover only under the consolidated insurance program.

19 (b) An insurer providing coverage under the consolidated
20 insurance program does not have subrogation rights against a
21 contractor or against any insurance policy of the principal or
22 contractor for losses paid under the consolidated insurance
23 program.

24 Sec. 151.059. DEFENSE COVERAGE FOR CLAIM OR SUIT. (a) In a
25 lawsuit or arbitration proceeding that is covered by the
26 consolidated insurance program, an insurance policy under the
27 program must provide coverage for the defense of each contractor.

1 This coverage may be provided by a joint defense provision under the
2 program or by separate agreement among the affected contractors.

3 (b) Defense costs for a contractor under Subsection (a) may
4 not be included in the limit of liability of an insurance policy
5 under the consolidated insurance program if the defense costs for
6 the principal are not included in the limit of liability.

7 Sec. 151.060. LIMITED EXCEPTION TO RATING STANDARDS.
8 Sections 2053.002 and 2251.052, Insurance Code, and Section 1,
9 Chapter 50 (H.B. 32), Acts of the 53rd Legislature, Regular
10 Session, 1953 (Article 5.77, Vernon's Texas Insurance Code), do not
11 apply to rates used for an insurance policy issued under a
12 consolidated insurance program under this chapter to the extent
13 that those laws require an insurer to produce rates for individual
14 risks.

15 Sec. 151.061. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR
16 PENALTIES. (a) A principal shall pay any:

17 (1) coverage deductible, self-insured retention, or
18 loss in a retrospective rating plan or other loss-sensitive rating
19 plan under a consolidated insurance program;

20 (2) penalty incurred under the program; and

21 (3) deductible or self-insured retention applicable
22 to any policy provided under the consolidated insurance program,
23 except as provided by Subsection (b).

24 (b) A principal may not assess a contractor covered under
25 the consolidated insurance program for a deductible, self-insured
26 retention, loss, or penalty described by Subsection (a), except for
27 a property damage claim deductible or self-insured retention if:

1 (1) the action of the contractor caused the property
2 damage claim; and

3 (2) the insurance carrier assesses the deductible or
4 self-insured retention against the principal.

5 (c) If the principal fails to pay a deductible, self-insured
6 retention, penalty or other item required of the principal by this
7 section, a contractor covered under the program may not be required
8 to pay the deductible, self-insured retention, penalty or other
9 item required of the principal.

10 [Sections 151.062-151.100 reserved for expansion]

11 SUBCHAPTER C. COVERAGE LIMITS

12 Sec. 151.101. GENERAL REQUIREMENTS. Subject to Section
13 151.052, aggregate and per-occurrence limits of all general
14 liability insurance and employer liability coverages under a
15 consolidated insurance program apply collectively to all
16 contractors under the program for the duration of each construction
17 project covered by the program.

18 Sec. 151.102. LIMITS. (a) Except as provided by Subsection
19 (b), for a construction project the general liability limit must be
20 not less than \$25 million.

21 (b) For a construction project covered by a rolling
22 consolidated insurance program, the general liability limit must be
23 not less than \$50 million.

24 (c) For employer liability coverage under a consolidated
25 insurance program, the per-occurrence liability limit may not be
26 less than the applicable general liability limits. Any umbrella or
27 excess policy limits provided under the consolidated insurance

1 program shall extend to a principal's or contractor's employer
2 liability coverage regardless of whether that employer liability
3 coverage is provided under the consolidated insurance program or by
4 the principal's or contractor's separately maintained policy.

5 [Sections 151.103-151.150 reserved for expansion]

6 SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR
7 ADMINISTRATION OF CONSOLIDATED INSURANCE PROGRAM

8 Sec. 151.151. REQUIRED DISCLOSURE AT BID SOLICITATION. (a)
9 At the time a principal or contractor is soliciting bids for a
10 construction project that may be covered by a consolidated
11 insurance program, the principal or contractor must disclose
12 prominently in the project specifications, or in any request for
13 bids or proposals, that the project may be covered by a consolidated
14 insurance program subject to this chapter.

15 (b) The disclosure must be sufficient to:

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

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

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

1 [Sections 151.153-151.200 reserved for expansion]

2 SUBCHAPTER E. PROGRAM ADMINISTRATION

3 Sec. 151.201. ADMINISTRATOR. Each principal shall appoint
4 a qualified administrator for the consolidated insurance program
5 whose primary duty is administration of the program.

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

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

13 (c) The administrator shall:

14 (1) maintain a current consolidated insurance program
15 manual that contains a detailed description of the consolidated
16 insurance program;

17 (2) provide all contractors with a current copy of the
18 manual that is consistent with the insurance provided and the scope
19 of the program:

20 (A) on the date of the contractor's enrollment in
21 the program; and

22 (B) not later than the 10th day after any changes
23 are made to the manual; and

24 (3) provide each contractor on the date of the
25 contractor's enrollment in the program with a certificate that
26 evidences the contractor's coverage under the program.

27 (d) In addition to the certificate provided under

1 Subsection (c)(3), the administrator shall obtain from the insurer
2 or a licensed agent of the insurer and deliver a certificate of
3 insurance on behalf of a contractor to evidence the coverages and
4 limits provided by the consolidated insurance program not later
5 than the 10th day after receipt of a request from a contractor.

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

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

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

15 (f) The administrator may comply with the requirements of
16 Subsection (e) by providing access to the documents on its Internet
17 website or by electronic transmission to the contractor. If the
18 contractor expressly requests that the items be provided in written
19 form, the administrator shall provide the items in written form to
20 the contractor.

21 (g) The administrator shall coordinate:

22 (1) any regular reporting required of a contractor and
23 any audits required of a contractor;

24 (2) all meetings with the insurer, whether with the
25 principal, a contractor, or any other party; and

26 (3) availability of any on-site medical facilities or
27 other mandatory initial medical care providers and contact

1 information for contractors.

2 (h) The administrator shall disseminate to all contractors
3 clear procedures for proper filing of claims under the consolidated
4 insurance program.

5 (i) The administrator shall ensure that:

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

8 (2) all contractors are notified in writing promptly
9 of any changes or cancellation in coverages provided by the
10 consolidated insurance program.

11 (j) The administrator shall monitor the financial standing
12 of the insurer as provided by Section 151.055 and shall provide
13 written notice to the principal and all contractors of any
14 significant negative change not later than the 10th day after the
15 date of the negative change. This subsection may not be interpreted
16 to mean that the principal or administrator is a guarantor of the
17 insurer's obligations under an insurance policy.

18 (k) The administrator shall provide oversight and
19 coordinate the filing of claims for the principal and any affected
20 contractor until:

21 (1) the construction project is completed;

22 (2) the coverage periods have expired; and

23 (3) the claims are resolved.

24 (l) Before the date on which the operation of the
25 consolidated insurance program and administration of the program
26 is closed, the administrator shall provide to the principal and
27 each contractor a written notice that contains the contact person's

name, company name, mailing address, telephone number, facsimile number, and electronic mail address, and any other necessary contact information of the person and company responsible for any closed, open, or future claims under the coverages provided by the consolidated insurance program.

(m) For purposes of this chapter and insurance benefits under the consolidated insurance program, the administrator owes a duty to the principal and each contractor that participates in the program to comply with the requirements of this chapter.

Sec. 151.203. ERRORS AND OMISSIONS COVERAGE REQUIRED; PRINCIPAL RESPONSIBLE. (a) The administrator shall maintain errors and omissions insurance coverage in the minimum amount of \$5 million per occurrence for any liability of the administrator under this chapter.

(b) The principal may not require the contractor to indemnify, hold harmless, or defend the principal or administrator for the acts or omissions of the administrator. Any such requirements shall be void and against public policy.

[Sections 151.204-151.250 reserved for expansion]

SUBCHAPTER F. ACCESS TO INFORMATION

Sec. 151.251. ACCESS TO RECORDS. The principal shall provide access to information, including electronic records, relating to the consolidated insurance program to all contractors covered by the program until the second anniversary of the expiration of any applicable statute of repose.

[Sections 151.252-151.300 reserved for expansion]

1 SUBCHAPTER G. ENFORCEMENT PROVISIONS

2 Sec. 151.301. GENERAL ENFORCEMENT; ADMINISTRATIVE
3 PENALTIES. The commissioner may impose a sanction under Chapter
4 82, issue a cease and desist order under Chapter 83, or assess an
5 administrative penalty under Chapter 84 on any person regulated by
6 the department who violates this chapter or a rule or order adopted
7 by the commissioner under this chapter.

8 [Sections 151.302-151.350 reserved for expansion]

9 SUBCHAPTER H. VENUE

10 Sec. 151.351. VENUE. Venue for a suit brought under this
11 chapter is in the county in which the construction project is
12 located.

13 [Sections 151.352-151.400 reserved for expansion]

14 SUBCHAPTER I. NONWAIVER

15 Sec. 151.401. NONWAIVER. A provision of this chapter may
16 not be waived by contract or otherwise.

17 SECTION 2. Chapter 151, Insurance Code, as added by this
18 Act, applies only to a new or renewed consolidated insurance
19 program for a construction project that begins on or after January
20 1, 2010. A consolidated insurance program for a construction
21 project that begins before January 1, 2010, is governed by the law
22 as it existed immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

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