

By: Thompson

H.B. No. 2093

A BILL TO BE ENTITLED

AN ACT

relating to the operation and regulation of certain consolidated insurance programs; providing administrative penalties.

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 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.

(2) "Construction project" means construction, remodeling, maintenance, or repair of improvements to real property. The term includes the immediate construction location and areas incidental and necessary to the work as defined in the construction contract documents. A construction project under this chapter does not include a single-family home, duplex, triplex, or quadruplex.

(3) "Contractor" means any person who has entered into a construction contract or a professional services contract and is

1 enrolled in the consolidated insurance program.

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

8 (5) "Principal" means the person who procures the
9 insurance policy under a consolidated insurance program.

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

13 [Sections 151.003-151.050 reserved for expansion]

14 SUBCHAPTER B. GENERAL REQUIREMENTS

15 Sec. 151.051. COVERAGE OF CONTRACTORS. (a) Each
16 contractor on a construction project covered by a consolidated
17 insurance program must:

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

20 (2) have equal rights under the policy with the
21 principal and other contractors, subject to insurance industry
22 standard differences between a first-named insured and a named
23 insured.

24 (b) Subsection (a) does not apply to a policy that is issued
25 individually in the name of the contractor as the first-named
26 insured under a consolidated insurance program.

27 Sec. 151.052. DURATION OF GENERAL LIABILITY COVERAGE. A

1 consolidated insurance program that provides completed operations
2 insurance coverage separate from or together with general liability
3 coverage must continue completed operations insurance coverage
4 until the expiration of the limitations period for bringing an
5 action for damages under Section 16.009, Civil Practice and
6 Remedies Code.

7 Sec. 151.053. NOTICE REGARDING REDUCTION IN LIMIT. (a)

8 Each contractor shall be notified in writing not later than the 10th
9 day after the date that the principal becomes aware that the total
10 limit of liability for any type of coverage issued under the
11 consolidated insurance program is reduced by:

12 (1) 50 percent; and

13 (2) each additional 25 percentage point reduction
14 after the initial 50 percent reduction.

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

17 Sec. 151.054. DUTY AND COMPLIANCE BY PRINCIPAL. A

18 principal under a consolidated insurance program owes a duty to
19 each contractor covered under the consolidated insurance program to
20 comply with the requirements of this chapter. The duty includes:

21 (1) payment of the premium for the insurance coverage;

22 and

23 (2) securing replacement insurance that meets the
24 requirements of this chapter, or reimbursing an enrolled contractor
25 for the cost of replacement insurance that meets the requirements
26 of this chapter, if the insurer of the consolidated insurance
27 program fails to continue to provide the coverage required under

1 the program or if the principal elects to discontinue providing
2 coverage under the program.

3 Sec. 151.055. CONTRACTOR INSURANCE. This chapter, or a
4 requirement of a contract entered into under this chapter, may not
5 be construed to prevent a contractor from obtaining any insurance
6 coverage not provided by the consolidated insurance program to
7 protect the contractor or the construction project.

8 Sec. 151.056. LIMITED EXCEPTION TO RATING STANDARDS.
9 Sections 2053.002 and 2251.052, Insurance Code, and Section 1,
10 Chapter 50 (H.B. 32), Acts of the 53rd Legislature, Regular
11 Session, 1953 (Article 5.77, Vernon's Texas Insurance Code), do not
12 apply to rates used for an insurance policy issued under a
13 consolidated insurance program under this chapter to the extent
14 that those laws require an insurer to produce rates for individual
15 risks.

16 Sec. 151.057. PAYMENT OF CERTAIN DEDUCTIBLES OR LOSSES.

17 (a) A principal shall pay:

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

21 (2) all deductible and self-insured retention
22 applicable to any policy provided under the consolidated insurance
23 program, 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, or loss described by Subsection (a), except for a
27 first-party property damage claim deductible or self-insured

1 retention if:

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

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

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

11 [Sections 151.058-151.100 reserved for expansion]

12 SUBCHAPTER C. COVERAGE LIMITS

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

19 [Sections 151.102-151.150 reserved for expansion]

20 SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR
21 ADMINISTRATION OF CONSOLIDATED INSURANCE PROGRAM

22 Sec. 151.151. REQUIRED DISCLOSURE AT BID SOLICITATION. At
23 the time a principal or contractor is soliciting bids for a
24 construction project that may be covered by a consolidated
25 insurance program, the principal or contractor must disclose
26 prominently in the project specifications or any request for bids
27 or proposals that the project may be covered by a consolidated

1 insurance program subject to this chapter and provide information
2 about the consolidated insurance program sufficient for a bidder to
3 understand the program's cost to and coverage for the bidder.

4 [Sections 151.152-151.200 reserved for expansion]

5 SUBCHAPTER E. PROGRAM ADMINISTRATION

6 Sec. 151.201. ADMINISTRATOR. Each principal shall appoint
7 a qualified administrator for the consolidated insurance program
8 whose primary duties to the principal and each contractor are to:

9 (1) administer the program; and

10 (2) comply with the requirements of this chapter.

11 [Sections 151.202-151.250 reserved for expansion]

12 SUBCHAPTER F. ENFORCEMENT PROVISIONS

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

19 [Sections 151.252-151.300 reserved for expansion]

20 SUBCHAPTER G. NONWAIVER

21 Sec. 151.301. NONWAIVER. A provision of this chapter may
22 not be waived by contract or otherwise.

23 SECTION 2. Chapter 151, Insurance Code, as added by this
24 Act, applies only to a new or renewed consolidated insurance
25 program for a construction project that begins on or after January
26 1, 2012. A consolidated insurance program for a construction
27 project that begins before January 1, 2012, is governed by the law

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

3 SECTION 3. This Act takes effect September 1, 2011.