

House Bill 2093
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 enrolled in the consolidated insurance program.

SENATE VERSION (IE)

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

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(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 house, townhouse, duplex, or land development directly related thereto.

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

(4) "Claim" includes a loss or liability for a claim, damage, expense, or governmentally imposed fine, penalty, administrative action, or other action.

(5) "Construction contract" means a contract, subcontract, or agreement, or a performance bond assuring the performance of any of the foregoing, entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation,

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

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

Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce this chapter.

[Sections 151.003-151.050 reserved for expansion]

SUBCHAPTER B. GENERAL REQUIREMENTS

Sec. 151.051. DURATION OF GENERAL LIABILITY COVERAGE. A consolidated insurance program that provides general liability insurance coverage must provide completed operations insurance coverage for a policy period of not less than three years.

[Sections 151.052-151.100 reserved for expansion]

remodeling, repair, or maintenance of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

(6) "Indemnitor" means a party to a construction contract that is required to provide indemnification or additional insured status to another party to the construction contract or to a third party.

(7) "Insurer" has the meaning assigned by Section 560.001.

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

Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce Subchapter B.

[Sections 151.003-151.050 reserved for expansion]

SUBCHAPTER B. GENERAL REQUIREMENTS

Sec. 151.051. DURATION OF GENERAL LIABILITY COVERAGE. A consolidated insurance program that provides general liability insurance coverage must provide completed operations insurance coverage for a policy period of not less than three years.

[Sections 151.052-151.100 reserved for expansion]

SUBCHAPTER _____ REQUIREMENTS RELATED TO INDEMNIFICATION

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Sec. 151.101. APPLICABILITY. (a) This subchapter applies to a construction contract for a construction project for which an indemnitor is provided or procures insurance subject to:

(1) this chapter; or

(2) Title 10.

(b) Subsection (a) applies regardless of whether the insurance is provided or procured before or after execution of the contract.

Sec. 151.102. AGREEMENT VOID AND UNENFORCEABLE. Except as provided by Section 151.103, a provision in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend a party, including a third party, against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitor or its agent, employee, or subcontractor of any tier.

Sec. 151.103. EXCEPTION FOR EMPLOYEE CLAIM. Section 151.102 does not apply to a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier.

Sec. 151.104. UNENFORCEABLE ADDITIONAL INSURANCE PROVISION. (a) Except as provided by Subsection (b), a provision in a construction contract that requires the purchase of additional insured coverage, or any

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coverage endorsement, or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage the scope of which is prohibited under this subchapter for an agreement to indemnify, hold harmless, or defend.

(b) This section does not apply to a provision in an insurance policy, or an endorsement to an insurance policy, issued under a consolidated insurance program to the extent that the provision or endorsement lists, adds, or deletes named insureds to the policy.

Sec. 151.105. EXCLUSIONS. This subchapter does not affect:

(1) an insurance policy, including a policy issued under an owner-controlled or owner-sponsored consolidated insurance program or a contractor-controlled or contractor-sponsored consolidated insurance program, except as provided by Section 151.104;

(2) a cause of action for breach of contract or warranty that exists independently of an indemnity obligation;

(3) indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and owner's lender are parties as provided under Section 151.001(5);

(4) general agreements of indemnity required by sureties as a condition of execution bonds for construction contracts;

(5) the benefits and protections under the workers' compensation laws of this state;

(6) the benefits or protections under the governmental immunity laws of this state;

(7) agreements subject to Chapter 127, Civil Practices and Remedies Code;

(8) a license agreement between a railroad company and a

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person that permits the person to enter the railroad company's property as an accommodation to the person for work under a construction contract that does not primarily benefit the railroad company;

(9) an indemnity provision pertaining to a claim based upon copyright infringement;

(10) an indemnity provision in a construction contract, or in an agreement collateral to or affecting a construction contract, pertaining to:

(A) a single family house, townhouse, duplex, or land development directly related thereto; or

(B) a public works project of a municipality; or

(11) a joint defense agreement entered into after a claim is made.

SUBCHAPTER C. NONWAIVER

Sec. 151.101. NONWAIVER. A provision of this chapter may not be waived by contract or otherwise.

No equivalent provision.

SECTION 2. Chapter 151, Insurance Code, as added by this Act, applies only to a new or renewed consolidated insurance program for a construction project that begins on or after January 1, 2012. A consolidated insurance program for a construction project that begins before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SUBCHAPTER C. NONWAIVER

Sec. 151.101. NONWAIVER. A provision of this chapter may not be waived by contract or otherwise. [FA1(1)-(4)]

SECTION __. Section 2252.902, Government Code, is repealed. [FA1(5)]

SECTION 2. (a) Chapter 151, Insurance Code, as added by this Act, applies only to a new or renewed consolidated insurance program for a construction project that begins on or after January 1, 2012. A consolidated insurance program for a construction project that begins before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose. (b) The changes in law made by this Act apply only to an original construction contract with an owner of an improvement or contemplated improvement that is

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entered into on or after the effective date of this Act. If an original construction contract with an owner of an improvement or contemplated improvement is entered into on or after the effective date of this Act, the changes in law made by this Act apply to a related subcontract, purchase order contract, personal property lease agreement, and insurance policy. If an original construction contract with an owner of an improvement or contemplated improvement is entered into before the effective date of this Act, that original construction contract and a related subcontract, purchase order contract, personal property lease agreement, and insurance policy are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. [FA1(6),(7)]

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

SECTION 3. This Act takes effect **January 1, 2012.** [FA1(8)]