

1 AN ACT

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

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

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

7 SUBTITLE C. PROGRAMS AFFECTING MULTIPLE LINES OF INSURANCE

8 CHAPTER 151. CONSOLIDATED INSURANCE PROGRAMS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 151.001. DEFINITIONS. In this chapter:

11 (1) "Consolidated insurance program" means a program  
12 under which a principal provides general liability insurance  
13 coverage, workers' compensation insurance coverage, or both that  
14 are incorporated into an insurance program for a single  
15 construction project or multiple construction projects.

16 (2) "Construction project" means construction,  
17 remodeling, maintenance, or repair of improvements to real  
18 property. The term includes the immediate construction location  
19 and areas incidental and necessary to the work as defined in the  
20 construction contract documents. A construction project under this  
21 chapter does not include a single family house, townhouse, duplex,  
22 or land development directly related thereto.

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

1 enrolled in the consolidated insurance program.

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

5 (5) "Construction contract" means a contract,  
6 subcontract, or agreement, or a performance bond assuring the  
7 performance of any of the foregoing, entered into or made by an  
8 owner, architect, engineer, contractor, construction manager,  
9 subcontractor, supplier, or material or equipment lessor for the  
10 design, construction, alteration, renovation, remodeling, repair,  
11 or maintenance of, or for the furnishing of material or equipment  
12 for, a building, structure, appurtenance, or other improvement to  
13 or on public or private real property, including moving,  
14 demolition, and excavation connected with the real property. The  
15 term includes an agreement to which an architect, engineer, or  
16 contractor and an owner's lender are parties regarding an  
17 assignment of the construction contract or other modifications  
18 thereto.

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

23 (7) "Insurer" has the meaning assigned by Section  
24 560.001.

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

27 Sec. 151.002. RULES. The commissioner shall adopt rules as

1 necessary to implement and enforce Subchapter B.

2 [Sections 151.003-151.050 reserved for expansion]

3 SUBCHAPTER B. GENERAL REQUIREMENTS

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

8 [Sections 151.052-151.100 reserved for expansion]

9 SUBCHAPTER C. REQUIREMENTS RELATED TO INDEMNIFICATION

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

13 (1) this chapter; or

14 (2) Title 10.

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

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

1 indemnitee, other than the indemnitor or its agent, employee, or  
2 subcontractor of any tier.

3 Sec. 151.103. EXCEPTION FOR EMPLOYEE CLAIM. Section  
4 151.102 does not apply to a provision in a construction contract  
5 that requires a person to indemnify, hold harmless, or defend  
6 another party to the construction contract or a third party against  
7 a claim for the bodily injury or death of an employee of the  
8 indemnitor, its agent, or its subcontractor of any tier.

9 Sec. 151.104. UNENFORCEABLE ADDITIONAL INSURANCE  
10 PROVISION. (a) Except as provided by Subsection (b), a provision  
11 in a construction contract that requires the purchase of additional  
12 insured coverage, or any coverage endorsement, or provision within  
13 an insurance policy providing additional insured coverage, is void  
14 and unenforceable to the extent that it requires or provides  
15 coverage the scope of which is prohibited under this subchapter for  
16 an agreement to indemnify, hold harmless, or defend.

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

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

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

1           (2) a cause of action for breach of contract or  
2 warranty that exists independently of an indemnity obligation,  
3 including an indemnity obligation in a construction contract under  
4 a construction project for which insurance is provided under a  
5 consolidated insurance program;

6           (3) indemnity provisions contained in loan and  
7 financing documents, other than construction contracts to which the  
8 contractor and owner's lender are parties as provided under Section  
9 151.001(5);

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

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

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

17           (7) agreements subject to Chapter 127, Civil Practice  
18 and Remedies Code;

19           (8) a license agreement between a railroad company and  
20 a person that permits the person to enter the railroad company's  
21 property as an accommodation to the person for work under a  
22 construction contract that does not primarily benefit the railroad  
23 company;

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

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

1 construction contract, pertaining to:

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

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

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

7 [Sections 151.106-151.150 reserved for expansion]

8 SUBCHAPTER D. NONWAIVER

9 Sec. 151.151. NONWAIVER. A provision of this chapter may  
10 not be waived by contract or otherwise.

11 SECTION 2. Section 2252.902, Government Code, is repealed.

12 SECTION 3. (a) Chapter 151, Insurance Code, as added by  
13 this Act, applies only to a new or renewed consolidated insurance  
14 program for a construction project that begins on or after January  
15 1, 2012. A consolidated insurance program for a construction  
16 project that begins before January 1, 2012, is governed by the law  
17 as it existed immediately before the effective date of this Act, and  
18 that law is continued in effect for that purpose.

19 (b) The changes in law made by this Act apply only to an  
20 original construction contract with an owner of an improvement or  
21 contemplated improvement that is entered into on or after the  
22 effective date of this Act. If an original construction contract  
23 with an owner of an improvement or contemplated improvement is  
24 entered into on or after the effective date of this Act, the changes  
25 in law made by this Act apply to a related subcontract, purchase  
26 order contract, personal property lease agreement, and insurance  
27 policy. If an original construction contract with an owner of an

1 improvement or contemplated improvement is entered into before the  
2 effective date of this Act, that original construction contract and  
3 a related subcontract, purchase order contract, personal property  
4 lease agreement, and insurance policy are governed by the law in  
5 effect immediately before the effective date of this Act, and that  
6 law is continued in effect for that purpose.

7           SECTION 4. This Act takes effect January 1, 2012.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2093 was passed by the House on May 13, 2011, by the following vote: Yeas 103, Nays 41, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2093 on May 26, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2093 on May 29, 2011, by the following vote: Yeas 121, Nays 21, 4 present, not voting.

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Chief Clerk of the House



H.B. No. 2093

I certify that H.B. No. 2093 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 23, Nays 8; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2093 on May 29, 2011, by the following vote: Yeas 26, Nays 5.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor