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) "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, 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 C. REQUIREMENTS RELATED TO INDEMNIFICATION

Sec. 151.101. APPLICABILITY. (a) This subchapter applies to a construction contract for a construction project for which an indemnitee provides 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 indemnitee 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 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,
including an indemnity obligation in a construction contract under
a construction project for which insurance is provided under a
consolidated insurance program;

(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 of 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 Practice
and Remedies Code;

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

[Sections 151.106-151.150 reserved for expansion]

SUBCHAPTER D. NONWAIVER

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

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 Section 2252.902, Government Code, is repealed.

SECTION 3. (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 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.

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

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

______________________________
Governor