

By: Carona S.B. No. 354  
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COMMITTEE SUBSTITUTE FOR S.B. No. 354 By: Carona

A BILL TO BE ENTITLED  
AN ACT

relating to the operation and regulation of certain consolidated  
insurance programs; providing 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) "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, for a contractor or contractors on a  
construction project, 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.

(4) "Construction project site" means the immediate  
construction location and areas emanating from that location, such  
as adjacent sidewalks, streets, storage areas, temporary  
construction yards, and staging areas.

(5) "Contractor" includes:

(A) a prime contractor;

(B) a general contractor;

(C) a subcontractor; and

(D) any other person who has signed a  
construction contract covered under the consolidated insurance  
program, including a client company of a staff leasing services  
company, as defined by Chapter 91, Labor Code.

(6) "Insurance credit" means a discount on a contract  
price offered to a principal by a contractor, or to a contractor by  
another contractor, bidding on a construction project contract in  
consideration of the principal providing insurance coverage for the  
construction project that covers the contractor.

(7) "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.

(8) "Residential construction project" means a  
construction project involving a single-family house, a duplex, a  
triplex, a quadruplex, or a unit in a multi-unit structure used for  
residential purposes:

(A) that is:

(i) owned by one or more adult persons; and

(ii) used or intended to be used as a  
dwelling by one of the owners; or

(B) being constructed or intended to be newly constructed with the intention of sale to a person and for a purpose described by Paragraph (A).

Sec. 151.002. PRINCIPAL. (a) For purposes of this chapter, "principal" means the person who procures the insurance policy.

(b) The principal under a consolidated insurance program is the person responsible for the payment of the premium on the insurance coverage. The principal is typically the first named insured on a general liability insurance policy.

Sec. 151.003. ROLLING CONSOLIDATED INSURANCE PROGRAM. For purposes of this chapter, a "rolling consolidated insurance program" means a consolidated insurance program based on a fixed expiration date and the construction value of the ongoing operations related to certain construction projects. The construction project may be:

(1) at one location and involve multiple projects or phases with an overall duration and value as provided by the policy coverage; or

(2) at multiple locations and involve different construction projects among different parties within the overall duration and value as provided by the policy coverage, such as:

(A) multiple schools being constructed by a school district under a bonded indebtedness program; or

(B) certain multiple construction projects for which a principal or contractor purchases a single insurance program.

Sec. 151.004. RULES. The commissioner shall adopt rules in the manner provided by Subchapter A, Chapter 36, as necessary to implement and enforce the purpose and intent of this chapter.

[Sections 151.005-151.050 reserved for expansion]

#### SUBCHAPTER B. GENERAL REQUIREMENTS FOR CONSOLIDATED INSURANCE PROGRAM

Sec. 151.051. GENERAL REQUIREMENTS. An insurance policy issued under a consolidated insurance program must:

(1) provide coverages in the manner required by the department under this code; and

(2) comply with:

(A) commissioner rules and all statutory requirements; and

(B) the requirements adopted under this chapter.

Sec. 151.052. REQUIRED COVERAGES. (a) An insurance policy issued under a consolidated insurance program must provide coverages for all operations on the construction project site that are necessary and incidental to the construction project to the extent of the type of insurance that is provided under the policy.

(b) This chapter or a contract requirement may not be interpreted to prevent a contractor from obtaining any insurance coverage not provided by the consolidated insurance program to protect the contractor and the construction project.

Sec. 151.053. NOTICE OF CERTAIN CHANGES. (a) Except as provided by Subsection (b), after the execution of a construction contract by the principal, the coverages or limits under the consolidated insurance program may not be reduced, nonrenewed, or canceled without written notice provided to the principal and all contractors. The notice required under this subsection must be provided by the insurer or administrator not later than the 60th day before the effective date of the reduction, nonrenewal, or cancellation.

(b) A notice to cancel coverage due to nonpayment of premium is effective only after written notice is provided to the principal at least 10 days before the scheduled effective date of the cancellation due to nonpayment of premium.

(c) If any coverage is canceled, the insurer or administrator shall notify each contractor in writing that coverage has been canceled. The notice under this subsection must be sent not later than the effective date of the cancellation of coverage.

Sec. 151.054. COVERAGE OF CONTRACTORS. (a) Each contractor on a construction project covered by a consolidated

insurance program must:

(1) be listed as a named insured on each general liability insurance policy under the program; and

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

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

(c) The principal or a contractor may not require a contractor to obtain an additional insured endorsement on the contractor's separately maintained insurance policy that is of the same general type as the insurance coverage provided by the consolidated insurance program other than an insurance policy covering off-site work for ongoing operations that is related to the project and that is not covered by the consolidated insurance program.

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

Sec. 151.055. COMPLIANCE BY PRINCIPAL AND OTHER CONTRACTORS. (a) A principal under a consolidated insurance program who does not comply with the requirements of this chapter may not, directly or indirectly, including by deduction from a payment or by requesting an insurance credit, charge a contractor for any insurance coverage provided to the contractor by the program.

(b) Failure by a principal to maintain the structure, management, or insurance coverage, or to reinstate the limits of liability if the limits are fully expended in a policy year, constitutes a material breach of all construction contracts and subcontracts being performed under the consolidated insurance program. For purposes of this subsection, the determination of when limits of liability are fully expended shall be based on incurred losses and expenses.

(c) A contractor who contracts with a lower-tier contractor may not charge the lower-tier contractor for any insurance coverage if the principal has failed to comply with the requirements of this chapter.

(d) For purposes of this section, noncompliance by a principal does not include substantial compliance by a principal with the requirements of this chapter such that the lack of full compliance does not violate the purpose and intent of this chapter and no person is harmed from failure to obtain full compliance.

Sec. 151.056. SUBROGATION. (a) The principal and a contractor do not have subrogation rights against each other for a general liability claim covered by the consolidated insurance program.

(b) A contractor and another contractor do not have subrogation rights against each other for a general liability claim covered by the consolidated insurance program.

Sec. 151.057. APPLICATION TO GENERAL LIABILITY COVERAGE. If a consolidated insurance program includes general liability coverage, coverage for a contractor under the consolidated insurance program must be provided for:

(1) a negligent act of a contractor, whether caused by a direct act of the contractor or assumed under contract; and

(2) the contractor's ongoing operations and the contractor's completed operations.

Sec. 151.058. DURATION OF GENERAL LIABILITY COVERAGE. (a) A consolidated insurance program that provides general liability coverage must continue completed operations insurance coverage until the expiration of the limitations period for bringing an action for damages as provided by Section 16.009, Civil Practice and Remedies Code.

(b) A contractor's separately maintained insurance policy

may not exclude coverage for ongoing operations of the contractor for warranty or punch-out work on a construction project covered by a consolidated insurance program that occurs after the contractor has received written notice from the principal, insurer, or administrator that the consolidated insurance program has ended.

(c) The principal, administrator, or insurer shall notify in writing each contractor covered under a consolidated insurance program of the date that ongoing operations coverage ends under the program. The notice must be sent not later than the date on which the coverage ends.

Sec. 151.059. INSURER REQUIREMENTS; INSURER RATINGS. (a) All insurance coverages under a consolidated insurance program for a residential or nonresidential construction project must be provided by an insurer that has:

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

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

(b) Insurance policies providing coverage under the consolidated insurance program shall be delivered to the first-named insured not later than the 60th day after the date on which the coverage takes effect.

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

Sec. 151.060. DEFENSE COVERAGE FOR CLAIM OR SUIT. (a) In the event of a lawsuit or arbitration proceeding that is covered by the consolidated insurance program, an insurance policy under the program must provide coverage for the defense of each contractor.

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

Sec. 151.061. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR PENALTIES. (a) Except as provided by Subsection (b), a principal is solely liable for:

(1) any coverage deductibles or losses in a retrospective rating plan or other loss-sensitive rating plan under a consolidated insurance program;

(2) any penalties incurred under the program; and

(3) all deductibles applicable to any policy provided under the consolidated insurance program.

(b) If a contractor covered by the consolidated insurance program is the cause of a property damage accident for which insurance is provided under the consolidated insurance program, the contractor shall reimburse the principal for any deductible amount for which the principal is responsible under Subsection (a). The deductible amount for which the contractor is responsible under this subsection may not exceed the lesser of:

(1) the amount of the contractor's deductible for the same general type of insurance coverage separately maintained by the contractor; or

(2) \$5,000.

Sec. 151.062. PREMIUMS ASSESSED TO CONTRACTOR. If any premiums for coverage subject to experience modification under a consolidated insurance program on a single or multiple construction project are assessed to a contractor, the contractor's most recent experience modifier, as of the date on which the contractor submitted the contractor's price proposal, must be used in the computation of the premium to be assessed to the contractor for the duration of the construction project.

Sec. 151.063. DATA REPORTS FOR WORKERS' COMPENSATION. (a) The administrator shall report at least bimonthly the loss and payroll data that relates to a contractor in detail to the contractor who is the subject of the report.

(b) The initial report under Subsection (a) must be sent not later than the 15th day of the second month after the date on which the contractor begins work on the construction project that requires payroll reports, with subsequent bimonthly reports sent

not later than the 15th day of the second month after a month in which the contractor performed work covered by the consolidated insurance program.

(c) The administrator shall send to each contractor annually a written compilation of all payroll and loss information attributable to the contractor who is the subject of the report. The report must be sent not later than the 120th day after the expiration date of the workers' compensation policy.

(d) The contractor who is the subject of the report under Subsection (c) shall send a written notice of any discrepancies in the payroll or loss information to the administrator not later than the 30th day after the date on which the contractor receives the report.

(e) The administrator shall resolve any discrepancies reported under Subsection (d) not later than the 30th day after the date of receipt of the contractor's report of discrepancies under Subsection (d), and shall report the correct information to the contractor and to the insurer.

(f) If the contractor who is the subject of the report is the sole source of the information required for compilation of the report, the deadlines under Subsection (b), (c), or (e) shall be extended by one day for each day the contractor who is the subject of the report delays providing the necessary information.

Sec. 151.064. AUDIT REQUIREMENTS. (a) Except as provided by Subsection (b), any required audit of a contractor covered by a consolidated insurance program who is subject to a premium charge or deduction for the coverage must be completed not later than the 90th day after the date on which the contractor completes the contractor's work on the construction project.

(b) The audit completion date under Subsection (a) shall be extended by one day for each day the contractor subject to the audit delays completion of a necessary audit by failing to provide the auditor with access to the contractor's records after the contractor has received written notice from the administrator, insurer, or auditor stating the date on which the audit is to be conducted.

(c) In complying with this section, the insurer shall comply with the commissioner's rules relating to:

(1) the statistical plan for workers' compensation; and

(2) the reporting requirements established under the statistical plan.

Sec. 151.065. LIMITED EXCEPTION TO RATING STANDARDS. Sections 2053.002 and 2251.052, Insurance Code, and Section 1, Chapter 50, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5.77, Vernon's Texas Insurance Code), do not apply to rates used for an insurance policy issued under a consolidated insurance program under this chapter to the extent that those laws require an insurer to produce rates for individual risks.

[Sections 151.066-151.100 reserved for expansion]

#### SUBCHAPTER C. COVERAGE LIMITS

Sec. 151.101. GENERAL REQUIREMENTS. Subject to Section 151.058, aggregate and per-occurrence limits of all general liability insurance coverages under a consolidated insurance program apply to all contractors under the program for the duration of each construction project covered by the program.

Sec. 151.102. PER-OCCURRENCE LIMITS. (a) For a residential construction project, the per-occurrence general liability limit must be not less than the greater of:

(1) 20 percent of the overall construction project value; or

(2) \$5 million.

(b) For a nonresidential construction project that has an overall construction project value that does not exceed \$400 million, the per-occurrence general liability limit must be not less than the greater of:

(1) 25 percent of the overall construction project value; or

(2) \$50 million.

(c) For a nonresidential construction project that has an overall construction project value that exceeds \$400 million, the per-occurrence general liability limit must be not less than \$100 million.

(d) For a nonresidential construction project covered by a rolling consolidated insurance program, the per-occurrence general liability limit must be not less than the greater of:

(1) 25 percent of the overall construction project value during the 12-month period immediately preceding the inception date of the policy; or

(2) \$50 million.

(e) For employer liability coverage under a consolidated insurance program that provides workers' compensation insurance coverage, the per-occurrence liability limit may not be less than the applicable general liability limit.

Sec. 151.103. ANNUAL REINSTATEMENT OF LIABILITY LIMITS. The consolidated insurance program must reinstate annually the liability limits for each policy subject to the program or be replaced by other policies that provide equivalent coverage and limits. This section does not apply to a completed operations coverage limit on completion of the construction project.

Sec. 151.104. NOTICE REGARDING REDUCTION IN LIMIT.

(a) The insurer, or the administrator on the insurer's behalf, shall notify all contractors in writing not later than the 10th day after the date the total limit of coverage for any type of liability coverage issued under the consolidated insurance program is reduced by:

(1) 50 percent; and  
(2) each additional 10 percentage point reduction after the initial 50 percent reduction.

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

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

(1) the initial limit of liability coverage; and  
(2) the limit of liability coverage that remains as of the notice date.

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

(e) The limit of liability may not be reduced if the insurer fails to comply with Subsection (a).

[Sections 151.105-151.150 reserved for expansion]  
SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR ADMINISTRATION OF  
CONSOLIDATED INSURANCE PROGRAM

Sec. 151.151. REQUIRED DISCLOSURE AT BID SOLICITATION. At the time a principal or contractor is soliciting bids for a construction project, the principal or contractor must disclose prominently in the project plans, specifications, and any request for bids or proposals that the project may be covered by a consolidated insurance program subject to this chapter.

Sec. 151.152. GENERAL ELEMENTS OF BID SOLICITATION DISCLOSURE. (a) Each disclosure made under Section 151.151 must include information sufficient to reasonably describe the insurance coverage and limits that will be provided under the consolidated insurance program and the program operation such that a bidder is able to compare the bidder's own insurance program with the coverages, limits, and operation program provided under the consolidated insurance program.

(b) The disclosure under Subsection (a) is not required to be as detailed as the disclosure required under Section 151.153.

Sec. 151.153. REQUIRED DISCLOSURE PRIOR TO CONTRACT EXECUTION. (a) A principal may establish for a construction project a minimum construction contract amount for a contractor to be included in a consolidated insurance program.

(b) Not later than the 14th day before the date on which a principal or contractor executes a contract for a construction project covered by a consolidated insurance program, the principal or contractor that solicited the bid must make a written disclosure

to the contractor that contains detailed information concerning the consolidated insurance program.

(c) After receipt of the written disclosure required under Subsection (b), if the disclosure contains any adverse material change from the disclosure made under Section 151.151, a contractor may, without recourse or liability for damage to any person:

(1) withdraw the contractor's price proposal for work on the construction project; or

(2) modify the price for the insurance component of the proposal for work on the construction project.

Sec. 151.154. GENERAL ELEMENTS OF PRECONTRACT DISCLOSURE. Each disclosure made under Section 151.153 must include:

(1) the name and address of each insurer providing an insurance policy or contract under the consolidated insurance program and identification of the coverage each insurer will provide;

(2) the name, primary contact name, street address, city, state, and zip code of the administrator of the consolidated insurance program;

(3) a copy of each form, including enrollment forms, claim forms, and payroll forms, that a contractor may be required to submit to the principal, administrator, or insurer;

(4) the number, frequency, and subject matter of any payroll reports or payroll audits of the contractor required by the insurer, administrator, or principal;

(5) the scope and limits of coverage for each insurance policy under the consolidated insurance program, including:

(A) an accurate specimen policy that contains full and complete declarations, insuring agreements, policy conditions, limitations, coverages, and endorsements; and

(B) a summary explanation for each endorsement;

and

(6) the scope of coverage and limits for each policy of excess insurance covering the consolidated insurance program, including:

(A) a statement that the excess policy will have the same terms, conditions, and coverages as the primary policy, with any material exceptions listed; and

(B) a summary explanation for each endorsement.

Sec. 151.155. FORMULA FOR INSURANCE CREDITS. (a) The disclosure required under Section 151.151 must include the formula to be used by a contractor in computing any insurance credits.

(b) The formula must include:

(1) the discounts, credits, and rate variances used by the contractor;

(2) examples of credit computations;

(3) a method to incorporate any scheduled credits, premium discounts, or other items of credit or discount that apply specifically to the contractor; and

(4) a specific explanation of how any premium increase or decrease resulting from payroll overruns or underruns will be applied.

(c) A principal may not require an insurance credit of a contractor for coverage provided under the consolidated insurance program for flat rate excess liability coverage separately maintained by the contractor.

[Sections 151.156-151.200 reserved for expansion]

#### SUBCHAPTER E. PROGRAM ADMINISTRATION

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

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

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

(c) The administrator shall:

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

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

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

(B) not later than the seventh day after any changes are made to the manual; and

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

(d) In addition to the certificate provided under Subsection (c)(3), the administrator shall obtain from the insurer or a licensed agent of the insurer and deliver a certificate of insurance on behalf of a contractor to evidence the coverages and limits provided by the consolidated insurance program not later than the fifth day after receipt of a request from a contractor.

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

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

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

(f) The administrator shall coordinate:

(1) any regular reporting required of the contractors and any audits required of the contractors;

(2) all meetings with the insurer, whether with the principal, the contractors, or other parties; and

(3) availability and communication between contractors and any on-site medical facilities.

(g) The administrator shall establish and disseminate to contractors:

(1) clear procedures for proper filing of claims; and

(2) required loss-control procedures.

(h) The administrator shall ensure that:

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

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

(i) The administrator shall monitor the financial standing of the insurer as provided by Section 151.059 and shall provide written notice to the principal and all contractors of any significant negative change not later than the 10th day after the date of the negative change.

(j) The administrator shall prepare and present to a contractor on at least a bimonthly basis any required payroll reports, claim reviews, and loss-control reviews that relate to that contractor.

(k) The administrator shall provide oversight and coordinate the filing of claims for the principal and any affected contractor until the construction project is completed and the operation of the consolidated insurance program and the administration of that program is closed.

(l) Before the date on which the operation of the consolidated insurance program and administration of the program is closed, the administrator shall provide to the principal and each contractor a written notice that contains the contact person's name, company name, mailing address, telephone number, facsimile number, 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.



Sec. 151.203. FIDUCIARY DUTY OF ADMINISTRATOR. For purposes of this chapter and insurance benefits under the consolidated insurance program, the administrator owes a fiduciary duty to each contractor that participates in the program.

Sec. 151.204. ERRORS AND OMISSIONS COVERAGE REQUIRED. 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.

[Sections 151.205-151.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT PROVISIONS

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

(b) An administrative penalty assessed under this chapter may not exceed \$30,000 for each day and for each violation.

[Sections 151.252-151.300 reserved for expansion]

SUBCHAPTER G. CIVIL LIABILITY

Sec. 151.301. CIVIL LIABILITY FOR VIOLATION OF CHAPTER. (a) A contractor who is harmed by a violation of this chapter may bring a suit or pursue other remedies against the violating party for civil damages resulting from the violation, plus reasonable attorney's fees.

(b) Venue for a suit brought under this section is in the county in which the construction project is located.

SECTION 2. Chapter 151, Insurance Code, as added by this Act, applies only to a consolidated insurance program for a construction project that begins on or after January 1, 2008. A consolidated insurance program for a construction project that begins before January 1, 2008, 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.

SECTION 3. This Act takes effect September 1, 2007.

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