

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 *CONSOLIDATED INSURANCE PROGRAMS*
14 (2) Title 10. *PROPERTY + CASUALTY INSURANCE*

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

*IF HAVE ONE
OF THESE TYPE
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1 indemnatee, 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.

*ACTION
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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.

*APPLIES TO CON-
TRACTUAL REQ-
UIREMENT FOR
INSURANCE.*

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

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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.

