

BILL ANALYSIS

Senate Research Center
82R6568 PMO-F

S.B. 1337
By: Van de Putte
State Affairs
5/3/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Consolidated insurance programs (CIPs) are insurance programs in which a principal, usually an owner or general contractor, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects. The policy typically provides coverage for each entity on the project, from the general contractor to the subcontractors and their employees for general liability, workers' compensation, and builder's risk. Among the benefits of CIPs are the cost savings that come from having one insurance policy cover the project and the owner knowing that each contractor on a project has insurance.

Unfortunately, the coverage provided by CIPs is not always reflective of the coverage a contractor or subcontractor would have in the absence of a CIP. As a result, a contractor or subcontractor may be exposed to greater financial liability through higher deductibles or may not have coverage that covers their liability through the statute of repose. S.B. 1337 addresses these issues by requiring that CIPs that offer completed operations coverage offer this coverage through the statute of repose and requiring a principal to pay any deductible required by the CIP.

As proposed, S.B. 1337 amends current law relating to the operation and regulation of certain consolidated insurance programs, and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 151.002, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Insurance Code, by adding Subtitle C, as follows:

SUBTITLE C. PROGRAMS AFFECTING MULTIPLE LINES OF INSURANCE

CHAPTER 151. CONSOLIDATED INSURANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. DEFINITIONS. Defines, in this chapter, "consolidated insurance program," "construction project," "contractor," "insurer," and "principal."

Sec. 151.002. RULES. Requires the commissioner of insurance (commissioner) to adopt rules in the manner provided by Subchapter A (Rules), Chapter 36 (Department Rules and Procedures), as necessary to implement and enforce the purpose and intent of this chapter.

[Reserves Sections 151.003-151.050 for expansion.]

SUBCHAPTER B. GENERAL REQUIREMENTS

Sec. 151.051. COVERAGE OF CONTRACTORS. (a) Requires each contractor on a construction project covered by a consolidated insurance program to:

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

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

(b) Provides that 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.

Sec. 151.052. DURATION OF GENERAL LIABILITY COVERAGE. Requires that a consolidated insurance program that provides completed operations insurance coverage separate from or together with general liability coverage continue completed operations insurance coverage until the expiration of the limitations period for bringing an action for damages under Section 16.009 (Persons Furnishing Construction or Repair of Improvements), Civil Practice and Remedies Code.

Sec. 151.053. NOTICE REGARDING REDUCTION IN LIMIT. (a) Requires each contractor to be notified in writing not later than the 10th day after the date that the principal becomes aware that the total limit of liability for any type of coverage issued under the consolidated insurance program is reduced by:

(1) 50 percent; and

(2) each additional 25 percentage point reduction after the initial 50 percent reduction.

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

Sec. 151.054. DUTY AND COMPLIANCE BY PRINCIPAL. Provides that a principal under a consolidated insurance program owes a duty to each contractor covered under the consolidated insurance program to comply with the requirements of this chapter. Provides that the duty includes:

(1) payment of the premium for the insurance coverage; and

(2) securing replacement insurance that meets the requirements of this chapter, or reimbursing an enrolled contractor for the cost of replacement insurance that meets the requirements of this chapter, if the insurer of the consolidated insurance program fails to continue to provide the coverage required under the program or if the principal elects to discontinue providing coverage under the program.

Sec. 151.055. CONTRACTOR INSURANCE. Prohibits this chapter, or a requirement of a contract entered into under this chapter, from being construed to prevent a contractor from obtaining any insurance coverage not provided by the consolidated insurance program to protect the contractor or the construction project.

Sec. 151.056. LIMITED EXCEPTION TO RATING STANDARDS. Provides that Sections 2053.002 (Rate Standards) and 2251.052 (Rate Standards), Insurance Code, and Section 1, Chapter 50 (H.B. 32), 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.

Sec. 151.057. PAYMENT OF CERTAIN DEDUCTIBLES OR LOSSES. (a) Requires a principal to pay:

(1) any coverage deductible, self-insured retention, or loss in a retrospective rating plan or other loss-sensitive rating plan under a consolidated insurance program; and

(2) all deductible and self-insured retention applicable to any policy provided under the consolidated insurance program, except as provided by Subsection (b).

(b) Prohibits a principal from assessing a contractor covered under the consolidated insurance program for a deductible, self-insured retention, or loss described by Subsection (a), except for a first-party property damage claim deductible or self-insured retention if:

(1) the action of the contractor caused the property damage claim; and

(2) the insurance carrier assesses the deductible or self-insured retention against the principal.

(c) Prohibits a contractor covered under the program, if the principal fails to pay a deductible, self-insured retention, or other item required of the principal by this section, from being required to pay the deductible, self-insured retention, or other item required of the principal.

[Reserves Sections 151.058-151.100 for expansion.]

SUBCHAPTER C. COVERAGE LIMITS

Sec. 151.101. GENERAL REQUIREMENTS. Provides that, subject to Section 151.052, aggregate and per-occurrence limits of all general liability insurance and employer liability coverages under a consolidated insurance program apply collectively to all contractors under the program for the duration of each construction project covered by the program.

[Reserves Sections 151.102-151.150 for expansion.]

SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR ADMINISTRATION OF CONSOLIDATED INSURANCE PROGRAM

Sec. 151.151. REQUIRED DISCLOSURE AT BID SOLICITATION. Requires the principal or contractor, at the time a principal or contractor is soliciting bids for a construction project that may be covered by a consolidated insurance program, to disclose prominently in the project specifications or any request for bids or proposals that the project may be covered by a consolidated insurance program subject to this chapter and provide information about the consolidated insurance program sufficient for a bidder to understand the program's cost to and coverage for the bidder.

[Reserves Sections 151.152-151.200 for expansion.]

SUBCHAPTER E. PROGRAM ADMINISTRATION

Sec. 151.201. ADMINISTRATOR. Requires each principal to appoint a qualified administrator for the consolidated insurance program whose primary duties to the principal and each contractor are to:

(1) administer the program; and

(2) comply with the requirements of this chapter.

[Reserves Sections 151.202-151.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT PROVISIONS

Sec. 151.251. GENERAL ENFORCEMENT; ADMINISTRATIVE PENALTIES. Authorizes the commissioner to impose a sanction under Chapter 82 (Sanctions), issue a cease and desist order under Chapter 83 (Emergency Cease and Desist Orders), or assess an administrative penalty under Chapter 84 (Administrative Penalties) on any person regulated by the Texas Department of Insurance who violates this chapter or a rule or order adopted by the commissioner under this chapter.

[Reserves Sections 151.252-151.300 for expansion.]

SUBCHAPTER G. NONWAIVER

Sec. 151.301. NONWAIVER. Prohibits a provision of this chapter from being waived by contract or otherwise.

SECTION 2. Makes application of Chapter 151, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 3. Effective date: September 1, 2011.