

SENATE AMENDMENTS

2nd Printing

By: Thompson

H.B. No. 2093

A BILL TO BE ENTITLED

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 home, duplex, triplex, or quadruplex.

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

1 enrolled in the consolidated insurance program.

2 (4) "Insurer" means an insurance company, including a
3 mutual insurance company or a capital stock company, a reciprocal
4 or interinsurance exchange, a Lloyd's plan, or another legal entity
5 authorized to engage in the business of general liability insurance
6 or workers' compensation insurance in this state. The term
7 includes an eligible surplus lines insurer.

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

10 Sec. 151.002. RULES. The commissioner shall adopt rules as
11 necessary to implement and enforce this chapter.

12 [Sections 151.003-151.050 reserved for expansion]

13 SUBCHAPTER B. GENERAL REQUIREMENTS

14 Sec. 151.051. DURATION OF GENERAL LIABILITY COVERAGE. A
15 consolidated insurance program that provides general liability
16 insurance coverage must provide completed operations insurance
17 coverage for a policy period of not less than three years.

18 [Sections 151.052-151.100 reserved for expansion]

19 SUBCHAPTER C. NONWAIVER

20 Sec. 151.101. NONWAIVER. A provision of this chapter may
21 not be waived by contract or otherwise.

22 SECTION 2. Chapter 151, Insurance Code, as added by this
23 Act, applies only to a new or renewed consolidated insurance
24 program for a construction project that begins on or after January
25 1, 2012. A consolidated insurance program for a construction
26 project that begins before January 1, 2012, is governed by the law
27 as it existed immediately before the effective date of this Act, and

1 that law is continued in effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2011.

ADOPTED

MAY 23 2011

Robert Owen

FLOOR AMENDMENT NO. 1

BY: _____

Arlene Spaw
Secretary of the Senate

1 Amend H.B. No. 2093 (Senate committee report) as follows:

2 (1) In SECTION 1 (page 1) in added Section 151.001,
3 Insurance Code, line 27, strike "single-family home, duplex,
4 triplex, or quadruplex" and substitute "single family house,
5 townhouse, duplex, or land development directly related
6 thereto".

7 (2) In SECTION 1 (page 1) in added Section 151.001,
8 Insurance Code, strike lines 32-37 and substitute the following
9 and renumber any subsequent subdivisions and update any cross-
10 references accordingly:

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

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

28 (6) "Indemnitor" means a party to a construction
29 contract that is required to provide indemnification or

1 additional insured status to another party to the construction
2 contract or to a third party.

3 (7) "Insurer" has the meaning assigned by Section
4 560.001.

5 (3) In SECTION 1 (page 1, between lines 48 and 49), in
6 added Chapter 151, Insurance Code, insert the following new
7 Subchapter C and renumber and reletter any subsequent sections
8 and subchapters and update any cross-references accordingly:

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
12 an 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
17 the 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
22 public policy to the extent that it requires an indemnitor to
23 indemnify, hold harmless, or defend a party, including a third
24 party, against a claim caused by the negligence or fault, the
25 breach or violation of a statute, ordinance, governmental
26 regulation, standard, or rule, or the breach of contract of the
27 indemnitee, its agent or employee, or any third party under the
28 control or supervision of the indemnitee, other than the
29 indemnitor or its agent, employee, or subcontractor of any tier.

30 Sec. 151.103. EXCEPTION FOR EMPLOYEE CLAIM. Section
31 151.102 does not apply to a provision in a construction contract

1 that requires a person to indemnify, hold harmless, or defend
2 another party to the construction contract or a third party
3 against a claim for the bodily injury or death of an employee of
4 the indemnitor, its agent, or its subcontractor of any tier.

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

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

19 Sec. 151.105. EXCLUSIONS. This subchapter does not
20 affect:

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

26 (2) a cause of action for breach of contract or
27 warranty that exists independently of an indemnity obligation;

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

1 (4) general agreements of indemnity required by
2 sureties as a condition of execution of bonds for construction
3 contracts;

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

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

8 (7) agreements subject to Chapter 127, Civil
9 Practices and Remedies Code;

10 (8) a license agreement between a railroad company
11 and a person that permits the person to enter the railroad
12 company's property as an accommodation to the person for work
13 under a construction contract that does not primarily benefit
14 the railroad company;

15 (9) an indemnity provision pertaining to a claim
16 based upon copyright infringement;

17 (10) an indemnity provision in a construction
18 contract, or in an agreement collateral to or affecting a
19 construction contract, pertaining to:

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

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

23 (11) a joint defense agreement entered into after a
24 claim is made.

25 (4) In SECTION 1, in added Section 151.002, Insurance Code
26 (page 1, line 41), strike "this chapter" and substitute
27 "Subchapter B".

28 (5) Insert the following appropriately numbered SECTION
29 and renumber any subsequent SECTIONS accordingly:

30 SECTION ____ . Section 2252.902, Government Code, is
31 repealed.

1 (6) In SECTION 2, line 52, between the period and
2 "Chapter", insert "(a)".

3 (7) In SECTION 2, between lines 58 and 59, insert the
4 following:

5 (b) The changes in law made by this Act apply only to an
6 original construction contract with an owner of an improvement
7 or contemplated improvement that is entered into on or after the
8 effective date of this Act. If an original construction
9 contract with an owner of an improvement or contemplated
10 improvement is entered into on or after the effective date of
11 this Act, the changes in law made by this Act apply to a related
12 subcontract, purchase order contract, personal property lease
13 agreement, and insurance policy. If an original construction
14 contract with an owner of an improvement or contemplated
15 improvement is entered into before the effective date of this
16 Act, that original construction contract and a related
17 subcontract, purchase order contract, personal property lease
18 agreement, and insurance policy are governed by the law in
19 effect immediately before the effective date of this Act, and
20 that law is continued in effect for that purpose.

21 (8) In SECTION 3, line 59, strike "September 1, 2011" and
22 substitute "January 1, 2012".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 24, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2093 by Thompson (Relating to the operation and regulation of certain consolidated insurance programs.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation and regulation of certain consolidated insurance programs. Based on the analysis provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. Based on the analysis provided by the State Office of Risk Management, it is assumed that the bill would have no fiscal impact on the agency.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 479 State Office of Risk Management

LBB Staff: JOB, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2093 by Thompson (Relating to the operation and regulation of certain consolidated insurance programs.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation and regulation of certain consolidated insurance programs. Based on the analysis provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. Based on the analysis provided by the State Office of Risk Management, it is assumed that the bill would have no fiscal impact on the agency.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 479 State Office of Risk Management

LBB Staff: JOB, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 6, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2093 by Thompson (Relating to the operation and regulation of certain consolidated insurance programs.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation and regulation of certain consolidated insurance programs. Based on the analysis provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. Based on the analysis provided by the State Office of Risk Management, it is assumed that the bill would have no fiscal impact on the agency.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 479 State Office of Risk Management

LBB Staff: JOB, KJG, CH

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

Revision 1

April 5, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2093 by Thompson (Relating to the operation and regulation of certain consolidated insurance programs; providing administrative penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation and regulation of certain consolidated insurance programs; providing administrative penalties. Based on the analysis by the Texas Department of Insurance, State Office of Risk Management, and the Texas A&M University System Administration, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. It is assumed that the duties and responsibilities associated with the University of Texas System Administration implementing the provisions of the bill could be accomplished by utilizing existing agency resources. It is assumed any additional costs to contractors that may be passed on to the Texas Department of Transportation would be absorbed within the agency's existing construction and maintenance appropriations.

Local Government Impact

The Texas Association of Counties (TAC) reported that the bill may cause fiscal implications for counties, especially for those larger counties that are involved in consolidated insurance programs.

According to TAC, Travis County reported no significant fiscal implications associated with the bill.

Texas Municipal League (TML) reported that municipalities do not anticipate a significant fiscal impact associated with the bill.

Source Agencies: 454 Department of Insurance, 479 State Office of Risk Management, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, CH, MW, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 3, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2093 by Thompson (Relating to the operation and regulation of certain consolidated insurance programs; providing administrative penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation and regulation of certain consolidated insurance programs; providing administrative penalties. Based on the analysis by the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, CH