

## **BILL ANALYSIS**

C.S.S.B. 1081  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Consolidated insurance programs (CIPs) are comprehensive systems of insurance policies that are used to provide insurance coverage for the owner and all the contractors on a construction project. Such policies usually provide workers' compensation and general liability insurance with associated excess or umbrella coverage. Interested parties note that when contractors are bidding on a contract that may be covered by a CIP, they are often unaware of what the CIP will cover, the amount the deductible will be, and if the policy limits will be sufficient for the scope of the project. The parties also stress that contractors are often not provided or allowed access to a copy of the policy. C.S.S.B. 1081 seeks to address these issues.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1081 amends the Insurance Code to require, if a construction contract requires a person to enroll in a consolidated insurance program, the principal and contractor to provide specified information about the consolidated insurance program to the person not later than the 10th day before the date a principal enters into the contract with the person. The bill requires the required information to be accurate and authorizes a person who receives such information to justifiably rely on the information to decide whether to enter into the construction contract.

C.S.S.B. 1081 prohibits a person from being required to enter into a construction contract that requires enrollment in a consolidated insurance program unless the person is provided the required information, as applicable. The bill authorizes the person to elect not to enroll in the consolidated insurance program if the required information is not timely provided to a person within the prescribed 10-day period, as applicable. The bill authorizes a principal or contractor to provide a person that elects not to enroll in the consolidated insurance program with the required information after the prescribed 10-day period, as applicable. The bill requires the person to elect whether to enroll in the consolidated insurance program not later than the 10th day after the date that such information is provided.

C.S.S.B. 1081 requires a person that elects not to enroll in the consolidated insurance program and that enters into a construction contract for the construction project to obtain insurance coverage for the person's work on the project that substantially complies with the coverage terms and liability limits imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program. The bill requires the principal or contractor, as applicable, to compensate a person with whom the principal or contractor contracts

and who obtains such insurance coverage for the actual cost of that insurance coverage.

C.S.S.B. 1081 authorizes a contractor to request in writing from the principal, or from the party with which the contractor has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program. The bill sets out the deadline for providing the copy to the requesting contractor at the later of the 30th day after the date the request was sent or the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project. The bill establishes that it is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor is not provided before the later of the 75th day after the date the request was sent or the 90th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

C.S.S.B. 1081 requires a principal or contractor to provide information relating to consolidated insurance programs in hard copy written form on a person's express request. The bill provides that if a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of statutory provisions relating to consolidated insurance programs by transmitting the information by facsimile or e-mail or allowing access to the information on the principal's, or the principal's agent's, website.

C.S.S.B. 1081 requires the commissioner of insurance to adopt rules as necessary to implement general provisions regarding consolidated insurance programs, including the bill's provisions.

### **EFFECTIVE DATE**

January 1, 2016.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1081 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 151.002, Insurance Code, is amended to read as follows:

Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce Subchapters A and [Subchapter] B.

SECTION 2. Subchapter A, Chapter 151, Insurance Code, is amended by adding Sections 151.003 through 151.008 to read as follows:

Sec. 151.003. INFORMATION REQUIRED TO BE PROVIDED BY A PRINCIPAL PRIOR TO ENTERING INTO A CONSTRUCTION CONTRACT. Not less than 10 days before the date a principal enters into a construction contract with a person, and the contract contains a requirement for the person to enroll in a consolidated insurance program, the principal shall provide to the person the following information about the

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 151.002, Insurance Code, is amended to read as follows:

Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce this subchapter and Subchapter B.

SECTION 2. Subchapter A, Chapter 151, Insurance Code, is amended by adding Sections 151.003 through 151.009 to read as follows:

Sec. 151.003. INFORMATION REQUIRED TO BE PROVIDED BY PRINCIPAL BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a principal enters into the contract with the person, the principal shall provide the following information about the consolidated insurance program to the

consolidated insurance program:

(1) contact information, including phone and email addresses for the program administrator, the principal's risk manager, and the insurance company's contact person for filing a claim for each type of insurance coverage provided in the program;

(2) criteria for eligibility of enrollment into the program;

(3) a description of the project site to which the program coverages apply;

(4) a summary of insurance coverages to be provided to the contractor under the program, including:

(A) the policy form number and issuing organization name for a standardized insurance policy or a sample policy form if not a standardized form;

(B) per occurrence and aggregate limits of insurance coverage and any sublimits that may apply;

(C) term of coverage for each limit and sublimit; and

(D) material endorsements to the policy described in Paragraph (A);

(5) a summary of insurance coverages to be provided by the contractor;

(6) instructions to a person on how to include or exclude costs of insurance provided by the program in the person's proposal for work on the construction project;

(7) a description of the audit or claims procedures related to the program that could result in a contractor's responsibility for any additional costs, including the calculation for any assessment to a contractor related to the principal's payment of a policy deductible, and including specific monetary amounts related to those costs; and

(8) a description of a contractor's duties related to:

(A) reporting of payroll and retention of documentation; and

(B) reporting of claims and participation in safety inspections and incident reporting.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY A CONTRACTOR PRIOR TO ENTERING INTO A CONSTRUCTION CONTRACT WITH A PERSON. Not less than 10 days before the date a contractor enters into a construction contract with a person, and the contract contains a requirement for the person to enroll in a consolidated insurance program, the contractor shall provide to the

person:

(1) contact information, including phone number and e-mail address, for:

(A) the program administrator;

(B) the principal's risk manager; and

(C) the insurer's contact person for filing a claim for each type of insurance coverage provided in the program;

(2) the criteria for eligibility of enrollment into the program;

(3) a description of the project site covered by the program coverages;

(4) a summary of insurance coverages to be provided to the contractor under the program, including:

(A) the policy form number and issuing organization if the policy is a standardized insurance policy or, if the policy is not standardized, a sample policy form;

(B) per occurrence and aggregate limits of insurance coverages and any sublimits that may apply;

(C) term of coverages for each limit and sublimit, if any; and

(D) any material endorsements to the policy described under Paragraph (A);

(5) a summary of insurance coverages to be provided by the contractor;

(6) instructions on how to include or exclude costs of insurance provided by the program in the person's proposal for work on the construction project;

(7) a description of the audit or claims procedures related to the program that may result in additional cost to a contractor, including the method of calculation for any assessment charged to a contractor related to the principal's payment of a policy deductible and any other specific cost amounts; and

(8) a description of a contractor's duties related to reporting:

(A) payroll and retention of documentation; and

(B) claims and participation in safety inspections and incident reporting.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY CONTRACTOR BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a contractor enters into the contract with the person, the contractor must provide to the person, in an accurate form, the information

person the information about the consolidated insurance program listed in Section 151.003.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED PRIOR TO ENTERING INTO CONTRACT; FAILURE TO FURNISH.

(a) The information that is required to be provided under Section 151.003 shall accurately reflect those terms of the consolidated insurance program. A contractor providing information to a person under Section 151.004 shall accurately provide the information that the contractor received regarding the terms of the consolidated insurance program. A person receiving the information under Section 151.003 or 151.004 may justifiably rely on the information to guide its decision on whether to enter into a contract that requires the person to enroll in the consolidated insurance program.

(b) If a person is not timely provided the information required to be provided under Section 151.003 or 151.004, the person may elect not to enroll in the consolidated insurance program.

(c) If a person elects not to enroll under Subsection (b), a principal or contractor may provide to that person the information about the consolidated insurance program listed in Section 151.003 and the person will then have 10 days after the date the information is provided to elect to enter into the construction contract.

(d) If the person elects not to enroll in the consolidated insurance program under Subsection (b) or (c) and the person enters into a construction contract for the construction project, the person shall furnish insurance coverage for its work on the construction project in substantial compliance with what is required for a person that is not covered by an insurance policy under the consolidated insurance

listed in Section 151.003 that the contractor received under that section.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED.

The information required under Section 151.003 must be accurate, and a person who receives the information under Section 151.003 or 151.004 may justifiably rely on the information to decide whether to enter into the construction contract.

Sec. 151.006. FAILURE TO FURNISH.

(a) A person may not be required to enter into a construction contract that requires enrollment in a consolidated insurance program unless the person is provided the information in compliance with Section 151.003 or 151.004, as applicable. If the information required under Section 151.003 is not provided to a person within the 10-day period under Section 151.003 or 151.004, as applicable, the person may elect not to enroll in the consolidated insurance program.

(b) If a person elects not to enroll in the consolidated insurance program under Subsection (a), a principal or contractor may provide the person with the information required under Section 151.003 after the 10-day period under Section 151.003 or 151.004, as applicable. The person must elect whether to enroll in the consolidated insurance program not later than the 10th day after the date that the information is provided under this subsection.

(c) If a person elects not to enroll in the consolidated insurance program under Subsection (a) or (b) and enters into a construction contract for the construction project, the person must obtain insurance coverage for the person's work on the project that substantially complies with the coverage terms and liability limits imposed for other persons who work on the construction project but who are not insured

program.

(e) A person that provides insurance coverage under Subsection (d) shall be compensated by the party with which the person has entered into the construction contract for the person's actual cost of its insurance coverage.

(f) A person may not be required to enter into a construction contract that contains a requirement for the person to enroll in the consolidated insurance program unless the person has been provided the information about the consolidated insurance program listed in Section 151.003 at least 10 days prior to the date the agreement is entered into.

Sec. 151.006. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE. A contractor may request in writing from the principal, or from the party with which it has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program. A complete copy of the insurance policy must be provided to the requesting contractor by the later of the:

- (1) 30th day after the date the request was sent; or
- (2) 60th day after the date work covered by the consolidated insurance program commences on the construction project.

Sec. 151.007. FAILURE TO PROVIDE INSURANCE POLICY. If the requesting contractor has made a request under Section 151.006 of the party with which it has a direct contractual relationship, it shall be a material breach of the requesting contractor's construction contract under this chapter if the requesting contractor is not provided the information under Section 151.006 by the later of the:

- (1) 75th day after the date of the request; or
- (2) 60th day after the date work covered by the consolidated insurance program commences on the construction project.

Sec. 151.008. ELECTRONIC DELIVERY. (a) If the contractor requesting information under this subchapter expressly requests that the information be provided in written form, the principal or contractor shall provide the items in written form to the requesting contractor.

under the consolidated insurance program.

(d) The principal or contractor, as applicable, shall compensate a person with whom the principal or contractor contracts and who obtains insurance coverage under Subsection (c) for the actual cost of that insurance coverage.

Sec. 151.007. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE. (a) A contractor may request in writing from the principal, or from the party with which the contractor has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program.

(b) The copy described by Subsection (a) must be provided to the requesting contractor not later than the later of:

- (1) the 30th day after the date the request was sent; or
- (2) the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Sec. 151.008. FAILURE TO PROVIDE INSURANCE POLICY. It is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor under Section 151.007 is not provided before the later of:

- (1) the 75th day after the date the request was sent; or
- (2) the 90th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Sec. 151.009. ELECTRONIC DELIVERY. (a) On a person's express request, a principal or contractor shall provide information under this subchapter in hard copy written form.

(b) If the contractor requesting information has not made an express request for the information under this subchapter to be provided in written form and a principal or contractor chooses to provide the information required under this subchapter by electronic delivery, the principal or contractor may comply with the information delivery requirements in this subchapter by:  
(1) electronic transmission by facsimile or email; or  
(2) providing access to the required information on the principal's, or its agent's, Internet website.

SECTION 3. Sections 151.003 through 151.008, Insurance Code, as added by this Act, apply only to a construction contract that is entered into on or after January 1, 2016. A construction contract that is entered into before January 1, 2016, 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 4. This Act takes effect January 1, 2016.

(b) If a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of this chapter by:

(1) transmitting the information by facsimile or e-mail; or  
(2) allowing access to the information on the principal's, or the principal's agent's, Internet website.

SECTION 3. 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 January 1, 2016. If a construction contract with an owner of an improvement or contemplated improvement is entered into on or after January 1, 2016, the changes in law made by this Act apply to a related subcontract, purchase order contract, personal property lease agreement, consolidated insurance program, and insurance policy. If a construction contract with an owner of an improvement or contemplated improvement is entered into before January 1, 2016, that original construction contract and a related subcontract, purchase order contract, personal property lease agreement, consolidated insurance program, 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. Same as engrossed version.