

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1616 By: Coates of the Senate
3 and
4 Quinn of the House
5
6

7 (controlled insurance programs - Controlled
8 Insurance Programs Act - codification - effective
9 date -
10 emergency)
11
12

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
14 entire bill and insert

15 "An Act relating to controlled insurance programs;
16 creating the Controlled Insurance Programs Act;
17 providing short title; defining terms; directing the
18 Insurance Commissioner to promulgate certain rules;
19 specifying requirements for rules relating to
20 controlled insurance programs; specifying
21 requirements for a controlled insurance program that
22 includes general liability coverage; specifying
23 requirement for a controlled insurance program that
24 includes coverage for the workers' compensation
liabilities of participants; requiring Insurance
Commissioner to promulgate rules; requiring rules to
be promulgated by certain date; providing for
codification; providing an effective date; and
declaring an emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 7401 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Controlled
6 Insurance Programs Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 7402 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in the Controlled Insurance Programs Act:

11 1. "Commissioner" means the Insurance Commissioner;

12 2. "Completed operations liability" means liability arising out
13 of the installation, maintenance or repair of any product at a site
14 which is not owned or controlled by any person who:

15 a. performs that work, or

16 b. hires an independent contractor to perform that work.

17 Completed operations liability shall include liability
18 for activities which are completed or abandoned before
19 the date of the occurrence giving rise to the
20 liability;

21 3. "Contract" means a contract or agreement concerning
22 construction made and entered into by and between an owner and a
23 contractor, a contractor and a subcontractor or a subcontractor and
24 another subcontractor;

1 4. "Contractor" means a person performing construction and
2 having a contract with an owner of the real property or with a
3 trustee, agent or spouse of an owner;

4 5. "Controlled insurance program" means a program of liability
5 or workers' compensation insurance coverage, or both, that is
6 established by an owner or contractor who contractually requires
7 participation by contractors or subcontractors who are engaged in
8 work required by a construction contract. Controlled insurance
9 programs shall include, but not be limited to, coverage programs
10 that are for a fixed term of coverage on a single construction site
11 or project or multiple projects. A controlled insurance program
12 subject to the Controlled Insurance Programs Act shall not include
13 surety or builders risk;

14 6. "Construction" means furnishing labor, equipment, material
15 or supplies used or consumed for the design, construction,
16 alteration, renovation, repair or maintenance of a building, water
17 or waste water treatment facility, oil line, gas line, appurtenance
18 or other improvement to real property, including any moving,
19 demolition or excavation;

20 7. "Owner" means a person who holds an ownership interest in
21 real property;

22 8. "Participant" means any contractor or subcontractor whose
23 participation in a controlled insurance program is required by a
24 construction contract;

1 9. "Person" means an individual, corporation, estate, trust,
2 partnership, limited liability company, association, joint venture
3 or any other legal entity;

4 10. "Sponsoring participant" means the owner or contractor who
5 establishes the controlled insurance program;

6 11. "Subcontractor" means any person performing construction
7 covered by a contract between an owner and a contractor, but not
8 having a contract with the owner; and

9 12. "Substantial completion" means the stage of a construction
10 project where the project, or a designated portion thereof, is
11 sufficiently complete in accordance with the contract, so that the
12 owner can occupy or utilize the constructed project for its intended
13 use.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 7403 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 The Insurance Commissioner shall promulgate rules which shall
18 require that:

19 1. Controlled insurance programs shall:

20 a. establish a method for quarterly reporting of the
21 participant's respective claims details and loss
22 information to that participant,

23 b. provide that cancellation of any or all of the
24 coverage provided to a participant prior to completion

1 of work on the applicable project shall require the
2 owner or contractor who establishes a controlled
3 insurance program to either replace the insurance or
4 pay the subcontractor's cost to do so,

5 c. not charge enrolled participants who are not the
6 sponsoring participants a deductible in excess of Two
7 Thousand Five Hundred Dollars (\$2,500.00), or the
8 subcontractor's policy deductible, whichever is
9 greater, per occurrence or a per-claim assessment by
10 the sponsor,

11 d. keep self-insured retentions fully funded or
12 collateralized by the owner or contractor establishing
13 the controlled insurance program. This paragraph
14 shall not apply to deductible programs,

15 e. disclose specific requirements for safety or equipment
16 prior to accepting bids from contractors and
17 subcontractors on a construction project, and

18 f. allow monetary fines for alleged safety violations to
19 be assessed only by government agencies;

20 2. If a controlled insurance program includes general liability
21 coverage for the participants, then:

22 a. coverage for completed operations liability shall not,
23 after substantial completion of a construction
24 project, be canceled, lapse or expire before the

1 limitation on actions has expired as provided in
2 Section 93 of Title 12 of the Oklahoma Statutes, but
3 in no case greater than ten (10) years, and if another
4 insurer takes responsibility for completed operations
5 liability coverage, any and all prior completed
6 operation liability insurers shall be released from
7 completed operations liability unless specified
8 otherwise in subsequent policies,

9 b. general liability coverage shall not be required of
10 project participants except for liabilities not
11 arising on the site or sites of the construction
12 project. Any coverage maintained by the participants
13 shall cover liabilities not arising on the site or
14 sites of the construction project,

15 c. the general liability coverage provided to
16 participants shall provide for severability of
17 interest, except with respect to limits of liability,
18 so that participants shall be treated as if separately
19 covered under the policy,

20 d. participants shall be given the same shared limits of
21 liability coverage as applies to the sponsoring
22 participant under the controlled insurance program,
23 and
24

1 e. participants shall not be required to waive rights of
2 recovery for claims covered by the controlled
3 insurance program against another participant in the
4 controlled insurance program covered by general
5 liability insurance provided by the controlled
6 insurance program;

7 3. If a controlled insurance program includes coverage for the
8 workers' compensation liabilities of the participants, then:

9 a. workers' compensation coverage shall include all
10 workers' compensation for which payroll attributable
11 to the contractual agreement has been reported and the
12 premiums collected covering all services performed
13 incidental to, arising out of or emanating from the
14 construction site or sites and the coming or going to
15 or from the site or sites, and

16 b. participants shall not be required to provide
17 employment to a worker who has been injured on the job
18 unless:

- 19 (1) the worker's treating health care provider
20 certifies that the worker is fit to perform the
21 participant's work on the job site consistent
22 with the treating physician's limitations, and
23 (2) the employer has the pre-injury job or modified
24 work available.

1 Nothing in this section or any rules and regulations adopted
2 pursuant to the Controlled Insurance Program Act shall affect any
3 rights, remedies or duties under the Workers' Compensation Code or
4 any other state or federal employment law;

5 4. Participants shall not be required to provide indemnity
6 against claims for bodily injury and property damage arising out of
7 their work except to the extent and to the limits of contractual
8 liability coverage provided by the Controlled Insurance Programs
9 Act; and

10 5. Participants may pay compensation for amounts excluded from
11 contract deductions or credits to their designated agent/broker.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 7404 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The Insurance Commissioner shall promulgate any rules
16 necessary to carry out the provisions of the Controlled Insurance
17 Programs Act.

18 B. The Commissioner shall promulgate all rules required by the
19 Controlled Insurance Programs Act by January 1, 2013.

20 SECTION 5. This act shall become effective July 1, 2012.

21 SECTION 6. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
23 declared to exist, by reason whereof this act shall take effect and
24 be in full force from and after its passage and approval."

