

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1616

By: Coates of the Senate

and

6 Quinn of the House

7
8
9 COMMITTEE SUBSTITUTE

10 [controlled insurance programs - Controlled

11 Insurance Programs Act - codification - effective

12 date -

13 emergency]

14
15
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

1 As used in the Controlled Insurance Programs Act:

2 1. "Commissioner" means the Insurance Commissioner;

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

6 a. performs that work, or

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

8 Completed operations liability shall include liability
9 for activities which are completed or abandoned before
10 the date of the occurrence giving rise to the
11 liability;

12 3. "Contract" means a contract or agreement concerning
13 construction made and entered into by and between an owner and a
14 contractor, a contractor and a subcontractor or a subcontractor and
15 another subcontractor;

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

19 5. "Controlled insurance program" means a program of liability
20 or workers compensation insurance coverage, or both, that is
21 established by an owner or contractor who contractually requires
22 participation by contractors or subcontractors who are engaged in
23 work required by a construction contract. Controlled insurance
24 programs shall include, but not be limited to, coverage programs

1 that are for a fixed term of coverage on a single construction site
2 or project or multiple projects. A controlled insurance program
3 subject to the Controlled Insurance Programs Act shall not include
4 surety or builders risk;

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

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

13 8. "Participant" means any contractor or subcontractor whose
14 participation in a controlled insurance program is required by a
15 construction contract;

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

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

21 11. "Subcontractor" means any person performing construction
22 covered by a contract between an owner and a contractor, but not
23 having a contract with the owner; and
24

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

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

9 The Insurance Commissioner shall promulgate rules which shall
10 require that:

- 11 1. Controlled insurance programs shall:
 - 12 a. establish a method for quarterly reporting of the
13 participant's respective claims details and loss
14 information to that participant,
 - 15 b. provide that cancellation of any or all of the
16 coverage provided to a participant prior to completion
17 of work on the applicable project shall require the
18 owner or contractor who establishes a controlled
19 insurance program to either replace the insurance or
20 pay the subcontractor's cost to do so,
 - 21 c. not charge enrolled participants who are not the
22 sponsoring participants a deductible in excess of Two
23 Thousand Five Hundred Dollars (\$2,500.00), or the
24 subcontractor's policy deductible, whichever is

1 greater, per occurrence or a per-claim assessment by
2 the sponsor,

3 d. keep self-insured retentions fully funded or
4 collateralized by the owner or contractor establishing
5 the controlled insurance program. This paragraph
6 shall not apply to deductible programs,

7 e. disclose specific requirements for safety or equipment
8 prior to accepting bids from contractors and
9 subcontractors on a construction project, and

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

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

14 a. coverage for completed operations liability shall not,
15 after substantial completion of a construction
16 project, be canceled, lapse or expire before the
17 limitation on actions has expired as provided in
18 Section 93 of Title 12 of the Oklahoma Statutes, but
19 in no case greater than ten (10) years, and if another
20 insurer takes responsibility for completed operations
21 liability coverage, any and all prior completed
22 operation liability insurers shall be released from
23 completed operations liability unless specified
24 otherwise in subsequent policies,

1 b. general liability coverage shall not be required of
2 project participants except for liabilities not
3 arising on the site or sites of the construction
4 project. Any coverage maintained by the participants
5 shall cover liabilities not arising on the site or
6 sites of the construction project,

7 c. the general liability coverage provided to
8 participants shall provide for severability of
9 interest, except with respect to limits of liability,
10 so that participants shall be treated as if separately
11 covered under the policy,

12 d. participants shall be given the same shared limits of
13 liability coverage as applies to the sponsoring
14 participant under the controlled insurance program,
15 and

16 e. participants shall not be required to waive rights of
17 recovery for claims covered by the controlled
18 insurance program against another participant in the
19 controlled insurance program covered by general
20 liability insurance provided by the controlled
21 insurance program;

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

1 a. workers' compensation coverage shall include all
2 workers' compensation for which payroll attributable
3 to the contractual agreement has been reported and the
4 premiums collected covering all services performed
5 incidental to, arising out of or emanating from the
6 construction site or sites and the coming or going to
7 or from the site or sites, and

8 b. participants shall not be required to provide
9 employment to a worker who has been injured on the job
10 unless:

11 (1) the worker's treating health care provider
12 certifies that the worker is fit to perform the
13 participant's work on the job site consistent
14 with the treating physician's limitations, and

15 (2) the employer has the pre-injury job or modified
16 work available.

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

21 4. Participants shall not be required to provide indemnity
22 against claims for bodily injury and property damage arising out of
23 their work except to the extent and to the limits of contractual
24

1 liability coverage provided by the Controlled Insurance Programs
2 Act; and

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

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

8 A. The Insurance Commissioner shall promulgate any rules
9 necessary to carry out the provisions of the Controlled Insurance
10 Programs Act.

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

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

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

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