

1 ENGROSSED SENATE
2 BILL NO. 1616

By: Coates of the Senate

3 and

4 Quinn of the House

5
6 [controlled insurance programs - Controlled
7 Insurance Programs Act - codification - effective
8 date -

emergency]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

19 As used in the Controlled Insurance Programs Act:

20 1. "Commissioner" means the Insurance Commissioner;

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

24 a. performs that work, or

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

2 Completed operations liability shall include liability
3 for activities which are completed or abandoned before
4 the date of the occurrence giving rise to the
5 liability;

6 3. "Contract" means a contract or agreement concerning
7 construction made and entered into by and between an owner and a
8 contractor, a contractor and a subcontractor or a subcontractor and
9 another subcontractor;

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

13 5. "Controlled insurance program" means a program of liability
14 or workers compensation insurance coverage, or both, that is
15 established by an owner or contractor who contractually requires
16 participation by contractors or subcontractors who are engaged in
17 work required by a construction contract. Controlled insurance
18 programs shall include, but not be limited to, coverage programs
19 that are for a fixed term of coverage on a single construction site
20 or project or multiple projects. A controlled insurance program
21 subject to the Controlled Insurance Programs Act shall not include
22 surety or builders risk;

23 6. "Construction" means furnishing labor, equipment, material
24 or supplies used or consumed for the design, construction,

1 alteration, renovation, repair or maintenance of a building, water
2 or waste water treatment facility, oil line, gas line, appurtenance
3 or other improvement to real property, including any moving,
4 demolition or excavation;

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

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

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

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

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

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

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

4 The Insurance Commissioner shall promulgate rules which shall
5 require that:

6 1. Controlled insurance programs shall:

- 7 a. establish a method for quarterly reporting of the
8 participant's respective claims details and loss
9 information to that participant,
- 10 b. provide that cancellation of any or all of the
11 coverage provided to a participant prior to completion
12 of work on the applicable project, shall require the
13 owner or contractor who establishes a controlled
14 insurance program to either replace the insurance or
15 pay the subcontractor's cost to do so,
- 16 c. not charge enrolled participants who are not the
17 sponsoring participants, a deductible in excess of Two
18 Thousand Five Hundred Dollars (\$2,500.00) per
19 occurrence or a per claim assessment by the sponsor,
- 20 d. keep self-insured retentions fully funded or
21 collateralized by the owner or contractor establishing
22 the controlled insurance program. This paragraph
23 shall not apply to deductible programs,
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- e. disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project, and
- f. allow monetary fines for alleged safety violations to be assessed only by government agencies;

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

- a. coverage for completed operations liability shall not, after substantial completion of a construction project, be canceled, lapse or expire before the limitation on actions has expired as provided in Section 93 of Title 12 of the Oklahoma Statutes, but in no case greater than ten (10) years, and if another insurer takes responsibility for completed operations liability coverage, any and all prior completed operation liability insurers shall be released from completed operations liability unless specified otherwise in subsequent policies,
- b. general liability coverage shall not be required of project participants except for liabilities not arising on the site or sites of the construction project. Any coverage maintained by the participants shall cover liabilities not arising on the site or sites of the construction project,

- c. the general liability coverage provided to participants shall provide for severability of interest, except with respect to limits of liability, so that participants shall be treated as if separately covered under the policy,
- d. participants shall be given the same shared limits of liability coverage as applies to the sponsoring participant under the controlled insurance program, and
- e. participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program;

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

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

1 b. participants shall not be required to provide
2 employment to a worker who has been injured on the job
3 unless:

- 4 (i) the worker's treating health care provider
5 certifies that the worker is fit to perform the
6 participant's work on the job site consistent
7 with the treating physician's limitations; and
8 (ii) the employer has the pre-injury job or modified
9 work available.

10 Nothing in this subsection or any rules and regulations adopted
11 pursuant to the Controlled Insurance Program Act shall affect any
12 rights, remedies or duties under the Workers' Compensation Code or
13 any other state or federal employment law;

14 4. Participants shall not be required to provide indemnity
15 against claims for bodily injury and property damage arising out of
16 their work except to the extent and to the limits of contractual
17 liability coverage provided by the Controlled Insurance Programs
18 Act; and

19 5. Participants shall pay commission amounts excluded from
20 contract deductions or credits to their designated agent/broker.

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

1 A. The Insurance Commissioner shall promulgate any rules
2 necessary to carry out the provisions of the Controlled Insurance
3 Programs Act.

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

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

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

11 Passed the Senate the 13th day of March, 2012.

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Presiding Officer of the Senate

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15 Passed the House of Representatives the ____ day of _____,
16 2012.

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Presiding Officer of the House
of Representatives

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