SENATE FLOOR VERSION
February 27, 2012

SENATE BILL NO. 1616 By: Coates of the Senate

and

Quinn of the House

An Act relating to controlled insurance programs; creating the Controlled Insurance Programs Act; providing short title; defining terms; directing the Insurance Commissioner to promulgate certain rules; specifying requirements for rules relating to controlled insurance programs; specifying requirements for a controlled insurance program that includes general liability coverage; specifying requirement for a controlled insurance program that 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.

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

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

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

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

As used in the Controlled Insurance Programs Act:

1. "Commissioner" means the Insurance Commissioner;

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

a. performs that work, or

b. hires an independent contractor to perform that work. Completed operations liability shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

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

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

5. "Controlled insurance program" means a program of liability or

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

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

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

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

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

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

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

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

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

The Insurance Commissioner shall promulgate rules which shall require that:

1. Controlled insurance programs shall:

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

b. provide that cancellation of any or all of the coverage provided to a participant prior to completion of work on the applicable project, shall require the owner or contractor who establishes a controlled

insurance program to either replace the insurance or pay the subcontractor's cost to do so,

c. not charge enrolled participants who are not the sponsoring participants, a deductible in excess of Two Thousand Five Hundred Dollars ($2,500.00) per occurrence or a per claim assessment by the sponsor,

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

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

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

(i) the worker's treating health care provider certifies that the worker is fit to perform the participant's work on the job site consistent with the treating physician's limitations; and

(ii) the employer has the pre-injury job or modified work available.

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

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

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated 2-23-12 - DO PASS, As Coauthored.