

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1616

By: Coates

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5
6 AS INTRODUCED

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

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

23 SECTION 1. NEW LAW A new section of law to be codified
24 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".

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

4 As used in the Controlled Insurance Programs Act:

5 1. "Commissioner" means the Insurance Commissioner;

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

9 a. performs that work, or

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

11 Completed operations liability shall include liability
12 for activities which are completed or abandoned before
13 the date of the occurrence giving rise to the
14 liability;

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

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

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

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

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

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

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

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

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

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

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

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

14 The Insurance Commissioner shall promulgate rules which shall
15 require that:

- 16 1. Controlled insurance programs shall:
- 17 a. establish a method for quarterly reporting of the
18 participant's respective claims details and loss
19 information to that participant,
 - 20 b. provide that cancellation of any or all of the
21 coverage provided to a participant prior to completion
22 of work on the applicable project, shall require the
23 owner or contractor who establishes a controlled
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1 insurance program to either replace the insurance or
2 pay the subcontractor's cost to do so,

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

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

11 e. disclose specific requirements for safety or equipment
12 prior to accepting bids from contractors and
13 subcontractors on a construction project, and

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

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

18 a. coverage for completed operations liability shall not,
19 after substantial completion of a construction
20 project, be canceled, lapse or expire before the
21 limitation on actions has expired as provided in
22 Section 93 of Title 12 of the Oklahoma Statutes, but
23 in no case greater than ten (10) years, and if another
24 insurer takes responsibility for completed operations

1 liability coverage, any and all prior completed
2 operation liability insurers shall be released from
3 completed operations liability unless specified
4 otherwise in subsequent policies,

5 b. general liability coverage shall not be required of
6 project participants except for liabilities not
7 arising on the site or sites of the construction
8 project. Any coverage maintained by the participants
9 shall cover liabilities not arising on the site or
10 sites of the construction project,

11 c. the general liability coverage provided to
12 participants shall provide for severability of
13 interest, except with respect to limits of liability,
14 so that participants shall be treated as if separately
15 covered under the policy,

16 d. participants shall be given the same shared limits of
17 liability coverage as applies to the sponsoring
18 participant under the controlled insurance program,
19 and

20 e. participants shall not be required to waive rights of
21 recovery for claims covered by the controlled
22 insurance program against another participant in the
23 controlled insurance program covered by general
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1 liability insurance provided by the controlled
2 insurance program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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