

HOUSE Substitute for SENATE BILL No. 126

By Committee on Insurance

3-20

9 AN ACT concerning insurance; enacting the controlled insurance pro-
10 grams act.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. The provisions of sections 1 through 5, and amendments
14 thereto, shall be known and may be cited as the controlled insurance
15 programs act.

16 Sec. 2. As used in the controlled insurance programs act:

17 (a) "Commissioner" means the commissioner of insurance.

18 (b) "Completed operations liability" has the meaning ascribed
19 thereto in K.S.A. 40-4101, and amendments thereto.

20 (c) The terms "construction," "contract," "contractor," "owner,"
21 "person" and "subcontractor" have the meanings ascribed thereto in
22 K.S.A. 16-1802, and amendments thereto.

23 (d) "Controlled insurance program" means a program of liability or
24 workers' compensation insurance coverage, or both, that is established by
25 an owner or contractor who contractually requires participation by con-
26 tractors or subcontractors who are engaged in work required by a con-
27 struction contract. Controlled insurance programs shall include, but not
28 be limited to, coverage programs that are for a fixed term of coverage on
29 a single construction site or project or multiple projects, and a consoli-
30 dated or wrap-up insurance program as the term is used in subsection
31 (b)(3) of K.S.A. 16-1803, and amendments thereto. A controlled insur-
32 ance program subject to this act shall not include surety or builders risk.

33 (e) "Participant" means any contractor or subcontractor whose par-
34 ticipation in a controlled insurance program is required by a construction
35 contract.

36 (f) "Sponsoring participant" means the owner or contractor who es-
37 tablishes the controlled insurance program.

38 (g) "Substantial completion" shall have the meaning ascribed to it in
39 K.S.A. 16-1902 and amendments thereto.

40 Sec. 3. The commissioner by rules and regulations, shall require that:

41 (a) Controlled insurance programs shall:

42 (1) Establish a method for quarterly reporting of the participant's
43 respective claims details and loss information to that participant;

- 1 (2) provide that cancellation of any or all of the coverage provided to
2 a participant prior to completion of work on the applicable project, shall
3 require the owner or contractor who establishes a controlled insurance
4 program to either replace the insurance or pay the subcontractor's cost
5 to do so;
- 6 (3) not charge enrolled participants who are not the sponsoring par-
7 ticipants, a deductible in excess of \$2,500 per occurrence or a per claim
8 assessment by the sponsor;
- 9 (4) keep self-insured retentions fully funded or collateralized by the
10 owner or contractor establishing the controlled insurance program. This
11 paragraph shall not apply to deductible programs;
- 12 (5) disclose specific requirements for safety or equipment prior to
13 accepting bids from contractors and subcontractors on a construction pro-
14 ject; and
- 15 (6) allow monetary fines for alleged safety violations to be assessed
16 only by government agencies.
- 17 (b) If a controlled insurance program includes general liability cov-
18 erage for the participants, then:
- 19 (1) Coverage for completed operations liability shall not, after sub-
20 stantial completion of a construction project, be canceled, lapse or expire
21 before the limitation on actions has expired as established by subsection
22 (b) of K.S.A. 60-513, and amendments thereto, but in no case greater
23 than 10 years, and if another carrier takes responsibility for completed
24 operations liability coverage, any and all prior completed operation li-
25 ability carriers will be released from completed operations liability unless
26 specified otherwise in subsequent policies;
- 27 (2) general liability coverage shall not be required of project partici-
28 pants except for liabilities not arising on the site or sites of the construc-
29 tion project. Any coverage maintained by the participants shall cover li-
30 abilities not arising on the site or sites of the construction project;
- 31 (3) the general liability coverage provided to participants shall pro-
32 vide for severability of interest, except with respect to limits of liability,
33 so that participants shall be treated as if separately covered under the
34 policy; and
- 35 (4) participants shall be given the same shared limits of liability cov-
36 erage as applies to the sponsoring participant under the controlled insur-
37 ance program.
- 38 (d) If a controlled insurance program includes coverage for the work-
39 ers' compensation liabilities of the participants, then:
- 40 (1) Worker's compensation coverage shall include all workers com-
41 pensation for which payroll attributable to the contractual agreement has
42 been reported and the premiums collected covering all services per-
43 formed incidental to, arising out of or emanating from the construction

1 site or sites;

2 (2) participants shall not be required to waive rights of recovery for
3 claims covered by the controlled insurance program; and

4 (3) participants shall not be required to provide employment to a
5 worker who has been injured on the job unless:

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

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

10 Sec. 4. In addition to such other rules and regulations adopted pur-
11 suant to this act, the commissioner is hereby authorized to adopt such
12 rules and regulations relating to controlled insurance programs as may be
13 necessary to carry out the provisions of the controlled insurance programs
14 act.

15 Sec. 5. The commissioner shall adopt all rules and regulations re-
16 quired by this act by January 1, 2010.

17 Sec. 6. This act shall take effect and be in force from and after its
18 publication in the statute book.