

SESSION OF 2009

**SUPPLEMENTAL NOTE ON HOUSE  
SUBSTITUTE FOR SENATE BILL NO. 126**

As Recommended by House Committee on  
Insurance

**Brief\***

House Sub. for SB 126 would enact the Controlled Insurance Programs Act, an act that would create requirements for programs of liability insurance coverage that are established by an owner or contractor who contractually requires participation by contractors or subcontractors who are engaged in work required by a construction contract, and authorize the Insurance Commissioner to adopt rules and regulations required under the Act.

Controlled insurance programs would mean a program of liability or workers' compensation insurance coverage, or both, established by an owner or contractor and would include coverage programs that are for a fixed term of coverage on a single construction site, or project or multiple projects, and a consolidated or wrap-up insurance program. A controlled insurance program would not include surety or Builder's' risk.

The bill would provide that the Insurance Commissioner, by rules and regulations, shall require controlled insurance programs to:

- Establish a method for quarterly reporting of the participant's claims details and loss information to that participant;
- Provide that cancellation of any or all of the coverage provided to a participant prior to completion of work on the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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;

- Not charge enrolled participants who are not the sponsoring participants, a deductible in excess of \$2,500 per occurrence or a per claim assessment by the sponsor;
- Keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program (would not apply to deductible programs);
- Disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project; and
- Allow monetary fines for alleged safety violations to be assessed only by government agencies.

The bill would establish requirements for a controlled insurance program that includes either general liability coverage or workers' compensation liability coverage for the participants. Further, the bill provides that for controlled insurance programs that includes general liability coverage for its participants, coverage for completed operating liability cannot, after substantial completion of the project, be cancelled, lapse, or expire before the statutory limitation on actions has expired [KSA 60-513(b)], but in no case greater than ten years. If another carrier takes responsibility for completed operations coverage, any and all prior carriers will be released from completed operations liability unless specified otherwise in subsequent policies. Among the requirements for general liability coverage under the controlled insurance program is a requirement that participants be given the same shared limits of liability coverage as applies to the sponsoring participant.

Among the requirements for workers' compensation coverage under the controlled insurance program is a requirements that participants cannot be required to waive rights of recovery for claims covered by the program.

The Insurance Commissioner, in addition to the other rules and regulations adopted as required by the Act, would be permitted to adopt rules and regulations relating to the controlled insurance programs, as necessary, to carry out provisions of the Act. The Commissioner is required to adopt all rules and regulations required by the Act by January 1, 2010.

## **Background**

The House Committee on Insurance recommended the introduction of a substitute bill. The substitute bill was recommended by a subcommittee charged with review of the bill and the issues presented by conferees at the Committee bill hearing.

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the American Subcontractors Association whose representative indicated that owner or contractor-controlled insurance programs have become the number one problem for subcontractors. The bill, the representative noted, is not meant to eliminate wrap-up insurance programs and instead is to allow the programs to be regulated to comply with and provide the coverage that the policies subcontractors purchase for themselves provide. An independent insurance agency owner testified that many wrap-ups offer inadequate and limited coverage and employ burdensome procedures for subcontractors that can significantly amplify exposure to risk, increase administrative costs and paperwork, and generate problematic outcomes. A second representative of the ASA also testified in support of the bill. Opposition testimony was provided by a representative of JE Dunn. The representative testified that JE Dunn has used Controlled Insurance Programs (CIPs) effectively on many projects of varying size, including

hospitals, schools, office buildings, and prisons. The representative highlighted concerns with the legislation including whether Builder's Risk insurance could be subject to provisions of the bill and what parties could receive claims information under the bill. The representative indicated an amendment may be necessary to address issues associated with the legislation.

The fiscal note prepared on the introduced version of the bill by the Division of the Budget states that the Kansas Insurance Department indicates there would be no fiscal effect associated with the enactment of the bill.