

A new Article 54 is added to Title 40 of the Kansas Statutes as follows:

**40-5401. Short title.** This act shall be known as the Controlled Insurance Programs Act.

**40-5402. Definitions.** As used in this act:

- (a) "Commissioner" means the insurance commissioner of this state;
- (b) "Completed operations liability" shall have the same meaning as provided by Kansas Statutes 40-4101;
- (c) The terms "construction," "contractor," "owner," "person," and "subcontractor" shall have the same meanings as provided by the Kansas Fairness in Construction Contract Act, Kansas Statutes 16-1802;
- (d) "Construction 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;
- (e) "Controlled insurance program" means a program of liability insurance coverage 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, including coverage programs that are for a fixed term of coverage on a single construction site, and including a "consolidated or wrap-up insurance program" as that term is used in the Kansas Fairness in Construction Contract Act, Kansas Statutes 16-1803(b)(3).
- (f) "Participant" means any contractor or subcontractor whose participation in a controlled insurance program is required by a construction contract, but shall not include an owner or contractor who establishes a controlled insurance program.
- (g) "Substantial completion of a construction project" means the time when the work on a construction project is sufficiently complete as to permit the project to be used for its intended purpose.

**40-5403. Requirements for controlled insurance programs.** Controlled insurance programs shall:

- (a) Establish a method for timely reporting of claims details and loss histories to all participants;
- (b) Provide that cancellation of any or all of the coverage provided to a participant shall permit the participant to terminate the construction contract requiring its participation and to receive payment for all work completed through the date of

cancellation and for all proven costs of termination including but not limited to cancellation of supply orders and costs of demobilization;

(c) Not charge participants a deductible for coverage;

(d) Keep self-insured retentions fully funded by the owner or contractor establishing the controlled insurance program;

(e) Disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project;

(f) Permit fines for alleged safety violations to be challenged and reviewed *de novo* in a contract action or arbitration;

(g) Permit participants to be represented by their own insurance agents.

**40-5404. Requirements for general liability coverage under controlled insurance programs.** 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 cancelled, lapse or expire before the limitation on actions established by Kansas Statutes 60-513(b) has expired;

(b) General liability coverage shall not be required of project participants except for liabilities not arising on the site of the construction project, and any coverage maintained by the participants shall cover liabilities not arising on the site of the construction project;

(c) The general liability coverage provided to participants shall provide for severability of interest, so that participants shall be treated as if separately covered under the policy and are not charged with the knowledge of other participants;

(d) 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 program.

**40-5405. Requirements for workers' compensation coverage under controlled insurance programs.** If a controlled insurance program includes coverage for the workers' compensation liabilities of the participants, then:

(a) The coverage shall include all workers' compensation liabilities arising on the site of the construction project; and any coverage maintained by the participants

shall cover all workers' compensation liabilities not arising on the site of the construction project;

(b) Participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program, even if the those rights of recovery accrue against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program;

(c) Participants shall not be required to provide employment to a worker who has been injured on the job unless: (1) the worker's treating health care provider certifies that the worker is fit to carry out the pre-injury job or modified work similar to the pre-injury job without significant risk of re-injury; and (2) the employer has the pre-injury job or modified work available.

**40-5406. Rules and regulations.** The commissioner is hereby authorized to adopt such rules and regulations relating to controlled insurance programs as may be necessary to carry out the provisions of this act.