

SENATE BILL No. 91

By Committee on Financial Institutions and Insurance

1-26

1 AN ACT concerning insurance; relating to powers of the commissioner;
2 controlled insurance programs; amending K.S.A. 2016 Supp. 40-5403
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 40-5403 is hereby amended to read as
7 follows: 40-5403. The commissioner by rules and regulations, shall require
8 that:

9 (a) Controlled insurance programs shall:

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

12 (2) provide that cancellation of any or all of the coverage provided to
13 a participant prior to completion of work on the applicable project, shall
14 require the owner or contractor who establishes a controlled insurance
15 program to either replace the insurance or pay the subcontractor's cost to
16 do so;

17 (3) not charge enrolled participants who are not the sponsoring
18 participants, a deductible in excess of ~~\$2,500~~ \$25,000 per occurrence or a
19 per claim assessment by the sponsor;

20 (4) keep self-insured retentions fully funded or collateralized by the
21 owner or contractor establishing the controlled insurance program. This
22 paragraph shall not apply to deductible programs;

23 (5) disclose specific requirements for safety or equipment prior to
24 accepting bids from contractors and subcontractors on a construction
25 project; and

26 (6) allow monetary fines for alleged safety violations to be assessed
27 only by government agencies.

28 (b) If a controlled insurance program includes general liability
29 coverage for the participants, then:

30 (1) Coverage for completed operations liability shall not, after
31 substantial completion of a construction project, be canceled, lapse or
32 expire before the limitation on actions has expired as established by
33 ~~subsection (b) of~~ K.S.A. 60-513(b), and amendments thereto, but in no
34 case greater than 10 years, and if another carrier takes responsibility for
35 completed operations liability coverage, any and all prior completed
36 operation liability carriers will be released from completed operations

1 liability unless specified otherwise in subsequent policies;

2 (2) general liability coverage shall not be required of project
3 participants except for liabilities not arising on the site or sites of the
4 construction project. Any coverage maintained by the participants shall
5 cover liabilities not arising on the site or sites of the construction project;

6 (3) the general liability coverage provided to participants shall
7 provide for severability of interest, except with respect to limits of liability,
8 so that participants shall be treated as if separately covered under the
9 policy;

10 (4) participants shall be given the same shared limits of liability
11 coverage as applies to the sponsoring participant under the controlled
12 insurance program; and

13 (5) participants shall not be required to waive rights of recovery for
14 claims covered by the controlled insurance program against another
15 participant in the controlled insurance program covered by general liability
16 insurance provided by the controlled insurance program.

17 (c) If a controlled insurance program includes coverage for the
18 workers compensation liabilities of the participants, then:

19 (1) Workers compensation coverage shall include all workers
20 compensation for which payroll attributable to the contractual agreement
21 has been reported and the premiums collected covering all services
22 performed incidental to, arising out of or emanating from the construction
23 site or sites and the coming or going to or from the site or sites; and

24 (2) participants shall not be required to provide employment to a
25 worker who has been injured on the job unless:

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

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

30 Nothing in this subsection or any rules and regulations adopted
31 pursuant to the controlled insurance program act shall affect any rights,
32 remedies or duties under the workers compensation act or any other state
33 or federal employment law.

34 Sec. 2. K.S.A. 2016 Supp. 40-5403 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the statute book.