

BILL ANALYSIS

Senate Research Center

S.B. 425
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certificates of insurance are issued by insurers to interested third parties and serve as proof that those who are insured have obtained insurance coverage. Certificates include information about the effective date of the policy, what is covered under the policy, and the policy's coverage limits. In current practice, insurance agents complete certificates of insurance even though agents are not usually coverage experts. Completing a certificate of insurance often requires the agent to interpret policy terms and coverage with which the agent may be unfamiliar. This may result in incorrect interpretations of policy terms, which can later result in disputes over those terms and coverages.

Under current law, the Texas Department of Insurance does not approve or disapprove certificate of insurance forms.

S.B. 425 amends current law relating to property and casualty certificates of insurance and approval of property and casualty certificate of insurance forms by the Texas Department of Insurance and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 1811.003, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 10, Insurance Code, by adding Chapter 1811, as follows:

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. Defines "agent," "certificate holder," "certificate of insurance," "electronic record," "insurance," "insurer," "lender," "person," "policyholder," and "record" in this chapter.

Sec. 1811.002. APPLICABILITY. (a) Provides that this chapter applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located.

(b) Prohibits this chapter from being construed to apply to:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving a mortgage, a lien, a deed of trust, or any other security interest in real or personal property as security for a loan;

(2) a certificate issued under a group or individual policy for life insurance, credit insurance, accident and health insurance, long-term care

benefit insurance, or Medicare supplement insurance; or an annuity contract; or

(3) standard proof of motor vehicle liability insurance under Section 601.081 (Standard Proof of Motor Vehicle Liability Insurance Form), Transportation Code.

Sec. 1811.003. RULES. Authorizes the commissioner of insurance (commissioner) to adopt rules as necessary or proper to accomplish the purposes of this chapter.

Sec. 1811.004. FILING FEE. (a) Authorizes the Texas Department of Insurance (TDI) to collect a fee in an amount determined by the commissioner for the filing of a new or amended certificate of insurance form under this chapter.

(b) Prohibits the fee from exceeding \$100.

(c) Requires that a fee collected under this section be deposited to the credit of the TDI operating account.

[Reserves Sections 1811.005-1811.050 for expansion.]

SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER. (a) Prohibits a property or casualty insurer or agent from issuing a certificate of insurance or any other type of document purporting to be a certificate of insurance if the certificate or document alters, amends, or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.

(b) Prohibits a certificate of insurance or any other type of document from conveying a contractual right to a certificate holder.

Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE FORMS. (a) Prohibits an insurer or an agent from issuing a certificate of insurance unless the form of the certificate has been filed with and approved by TDI under Section 1811.101, or is a standard form deemed approved by TDI under Section 1811.103.

(b) Prohibits a person from executing, issuing, or requiring the issuance of a certificate of insurance for risks located in this state, unless the certificate of insurance form has been filed with and approved by TDI.

Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED CERTIFICATE OF INSURANCE FORMS. Prohibits a person from altering or modifying a certificate of insurance form approved under Section 1811.101 unless the alteration or modification is approved by TDI.

Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE OF INSURANCE. Prohibits a person from requiring the issuance of a certificate of insurance from an insurer, agent, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate refers.

Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE OF INSURANCE. Prohibits a person from requiring an agent or insurer, either in addition to or in lieu of a certificate of insurance, to issue any other document or correspondence, instrument, or record, including an electronic record, that is inconsistent with this chapter.

Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE FORMS. Requires a person who receives written notice under Section 1811.102 that a certificate of

insurance form filed under this chapter has been disapproved by the commissioner to immediately stop using the form.

[Reserves Sections 1811.057-1811.100 for expansion.]

SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Prohibits an insurer or agent, except as provided by Subsection (b), from delivering or issuing for delivery in this state a certificate of insurance unless the certificate's form has been filed with and approved by the commissioner and contains the phrase "for information purposes only" or similar language.

(b) Authorizes the commissioner, if a certificate of insurance form does not contain the language required by Subsection (a)(2) (relating to the phrase "for information purposes only"), to approve the form if the form states that the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form, and that the terms of the policy control over the terms of the certificate of insurance.

(c) Provides that a filed form is approved at the expiration of 60 days after the date the form is filed unless the commissioner by order approves or disapproves the form during the 60-day period beginning the date the form is filed. Provides that the commissioner's approval of a filed form constitutes a waiver of any unexpired portion of the 60-day period.

(d) Authorizes the commissioner to extend by not more than 10 days the 60-day period described by Subsection (c) during which the commissioner is authorized to approve or disapprove a form filed by an insurer or agent. Requires the commissioner to notify the insurer or agent of the extension before the expiration of the 60-day period.

(e) Provides that a filed form for which an extension has been granted under Subsection (d) is considered approved at the expiration of the extension period described by that subsection absent an earlier approval or disapproval of the form.

(f) Prohibits a person from using a form unless the form has been filed with and approved by the commissioner.

Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF APPROVAL. (a) Requires the commissioner to disapprove a form filed under Section 1811.101 or withdraw approval of a form if the form:

(1) contains a provision or has a title or heading that is misleading, is deceptive, or violates public policy;

(2) violates any state law, including a rule adopted under this code;

(3) requires an agent to provide certification of insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

(b) Prohibits the commissioner from disapproving a form filed under Section 1811.101 or withdrawing approval of a form based solely on the fact that the form contains language described by Section 1811.101(b).

(c) Requires that an order issued by the commissioner disapproving a form, or a notice of the commissioner's intention to withdraw approval of a form, state the grounds for the disapproval or withdrawal of approval in sufficient detail to reasonably inform the person filing the form of those grounds and the changes to the form necessary to obtain approval.

(d) Provides that an order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. Prohibits an order withdrawing approval of a form from becoming effective until the 30th day after the date of the order.

Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. Provides that a standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with TDI. Authorizes the commissioner, notwithstanding this section, to withdraw approval of a standard form under Section 1811.102.

Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. Provides that a certificate of insurance form and any supporting information filed with TDI under this subchapter is open to public inspection as of the date of the filing.

[Reserves Sections 1811.105-1811.150 for expansion.]

SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. Provides that a certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an agent constitutes a confirmation that the referenced insurance policy has been issued or that coverage has been bound. Provides that this section applies regardless of whether the face of the certificate includes the phrase "for information purposes only" or similar language.

Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF INSURANCE. Provides that a certificate of insurance is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.

Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF INSURANCE. Requires that a certificate of insurance not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement of insurance provides.

Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. Prohibits a certificate of insurance from containing a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

Sec. 1811.155. NOTICE. (a) Provides that a person may have a legal right to notice of cancellation, nonrenewal, or material change or any similar notice concerning a policy of insurance only if the person is named within the policy or an endorsement to the policy, and the policy or endorsement or a law, including a rule, of this state requires notice to be provided.

(b) Prohibits a certificate of insurance from altering the terms and conditions of the notice required by a policy of insurance or the law of this state.

Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION OF CHAPTER. Provides that a certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect.

[Reserves Sections 1811.157-1811.200 for expansion.]

SUBCHAPTER E. ENFORCEMENT AND REMEDIES

Sec. 1811.201. POWERS OF COMMISSIONER. (a) Authorizes the commissioner, if the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter, to:

- (1) issue a cease and desist order;
- (2) seek an injunction under Section 1811.203;
- (3) request that the attorney general recover a civil penalty under Section 1811.203;
- (4) impose sanctions on the insurer or agent as provided by Chapter 82 (Sanctions); or
- (5) take any combination of those actions.

(b) Provides that this section does not prevent or limit any action by or remedy available to the commissioner under applicable law.

Sec. 1811.202. HEARING; NOTICE. (a) Authorizes the commissioner to hold a hearing on whether to issue a cease and desist order under Section 1811.201 if the commissioner has reason to believe that:

- (1) an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter; or
- (2) an insurer or agent has engaged in or is threatening to engage in an unfair act related to a certificate of insurance.

(b) Requires the commissioner to serve on the insurer or agent a statement of charges and a notice of hearing in the form provided by Section 2001.052 (Contents of Notice), Government Code.

(c) Provides that a hearing under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) Provides that a person, including an insurer or agent, who wilfully violates this chapter is subject to a civil penalty of not more than \$1,000 for each violation.

(b) Authorizes the commissioner to request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person, including an insurer or agent, from continuing a violation or threat of violation of Subchapter B. Requires the district court, on application for injunctive relief and a finding that a person, including an insurer or agent, is violating or threatening to violate Subchapter B, to grant the injunctive relief and issue an injunction without bond.

(c) Authorizes the attorney general, on request by the commissioner, to institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.

Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) Authorizes the commissioner to investigate a complaint or allegation of specific violations by a person, including an insurer or agent, who has allegedly engaged in an act or practice prohibited by Subchapter B and to enforce the provisions of this chapter.

(b) Requires a person, if the commissioner has reason to believe that the person, including an insurer or agent, is performing an act in violation of Subchapter B, to immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

SECTION 2. Makes application of this Act prospective to January 1, 2012.

SECTION 3. Effective date: September 1, 2011.