

## **BILL ANALYSIS**

C.S.S.B. 425  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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. C.S.S.B. 425 seeks to address these matters by requiring the Texas Department of Insurance to approve certificates of insurance forms, authorizing the use of approved forms only, and establishing requirements and procedures for the approval, disapproval, and use of such forms.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 425 amends the Insurance Code to prohibit 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. The bill prohibits a certificate of insurance or any other type of document from conveying a contractual right to a certificate holder.

C.S.S.B. 425 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 the Texas Department of Insurance (TDI) or is a standard form deemed approved by TDI. The bill prohibits a person from executing, issuing, or requiring the issuance of a certificate of insurance for risks located in Texas unless the certificate of insurance form has been filed with and approved by TDI.

C.S.S.B. 425 prohibits a person from altering or modifying an approved certificate of insurance form unless the alteration or modification is approved by TDI. The bill 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 and 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 the bill's provisions. The bill requires a person who receives written notice that a certificate of insurance form filed with the commissioner of insurance has been disapproved to immediately stop using the form.

C.S.S.B. 425 prohibits an insurer or agency from delivering or issuing for delivery in Texas 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. The bill authorizes the commissioner, if a certificate of insurance form does not contain such language, 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.S.S.B. 425 establishes 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 and that the commissioner's approval constitutes a waiver of any unexpired portion of the 60-day period. The bill authorizes the commissioner to extend by not more than 10 days the 60-day period during which the commissioner may approve or disapprove a form and requires the commissioner to notify the insurer or agent of the extension before the expiration of the 60-day period. The bill establishes that a filed form for which an extension has been granted is considered approved at the expiration of the extension period absent an earlier approval or disapproval of the form and prohibits a person from using a form unless the form has been filed with and approved by the commissioner.

C.S.S.B. 425 requires the commissioner to disapprove such a form or withdraw approval of the form if the form contains a provision or has a title or heading that is misleading, is deceptive, or violates public policy; violates any state law, including a rule adopted under the Insurance Code; 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 directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction. The bill prohibits the commissioner from disapproving or withdrawing approval of such a form based solely on the fact that the form contains language stating 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.S.S.B. 425 requires an order issued by the commissioner disapproving a form or a notice of the commissioner's intention to withdraw approval of a form to 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. The bill establishes that an order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order and prohibits the commissioner from prescribing a date earlier than the 30th day after the effective date of the order, as prescribed by the commissioner.

C.S.S.B. 425 establishes 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. The bill authorizes the commissioner to withdraw approval of a standard form, regardless of this provision. The bill establishes that a certificate of insurance form and any supporting information filed with TDI is open to public inspection as of the date of the filing.

C.S.S.B. 425 establishes 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 and establishes that this provision applies regardless of whether the face of the certificate includes the phrase "for information purposes only" or similar language. The bill establishes that a certificate of insurance is not a policy of insurance; does not amend, extend, or alter coverage afforded by the referenced insurance policy; and does not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement

of insurance provides.

C.S.S.B. 425 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. The bill establishes 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 state law or rule requires notice to be provided. The bill prohibits a certificate of insurance from altering the terms and conditions of the notice required by a policy of insurance or state law. The bill establishes that a certificate of insurance that violates applicable state law is void and has no effect.

C.S.S.B. 425 authorizes the commissioner, if the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate the bill's provisions or a related rule, to issue a cease and desist order; seek an injunction; request that the attorney general recover a civil penalty; impose sanctions on the insurer or agent; or take any combination of those actions. The bill establishes that this provision does not prevent or limit any action by or remedy available to the commissioner under applicable law.

C.S.S.B. 425 authorizes the commissioner to hold a hearing on whether to issue a cease and desist order if the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate the bill's provisions or a related rule or an insurer or agent has engaged in or is threatening to engage in an unfair act related to a certificate of insurance. The bill requires the commissioner to serve on the insurer or agent a statement of charges and a notice of hearing in the form provided by state law and establishes that the hearing is a contested case under state law.

C.S.S.B. 425 subjects a person, including an insurer or agent, who wilfully violates the bill's provisions to a civil penalty of not more than \$1,000 for each violation. The bill 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 such a person from continuing a violation or threat of violation. The bill requires the district court, on application for injunctive relief and a finding that a person is violating or threatening to violate a prohibition against certain acts and practices, to grant the injunctive relief and issue an injunction without bond. The bill requires 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.

C.S.S.B. 425 authorizes the commissioner to investigate a complaint or allegation of specific violations by a person who has allegedly engaged in such a prohibited act or practice and to enforce the bill's provisions. The bill requires a person, if the commissioner has reason to believe that the person is performing a prohibited act, to immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

C.S.S.B. 425 makes its provisions applicable 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 Texas, regardless of where the certificate holder, policyholder, insurer, or agent is located. The bill prohibits its provisions from being construed to apply to a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving a mortgage, lien, deed of trust, or any other security interest in real or personal property as security for a loan; 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; an annuity contract; or standard proof of motor vehicle liability insurance.

C.S.S.B. 425 authorizes the commissioner to adopt rules as necessary or proper to accomplish the purposes of the bill's provisions and authorizes 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 the bill's provisions. The bill caps the fee at \$100 and requires the fee to be deposited to the credit of the TDI operating account.

C.S.S.B. 425 defines "agent," "certificate holder," "certificate of insurance," "insurance," "insurer," "person," and "policyholder," defines "lender" by reference, and defines "electronic record" and "record" by reference to the Business & Commerce Code.

C.S.S.B. 425 makes its provisions applicable to a certificate of insurance issued on or after January 1, 2012.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 425 differs from the original, in the definition of "certificate of insurance," by including the specification that such a document is a document executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage, whereas the original specifies that such a document is a document prepared by an insurer or agent and so issued. The substitute differs from the original in several provisions where the substitute refers to the execution of such a certificate, whereas the original refers in those provisions to the preparation of such a certificate.

C.S.S.B. 425 differs from the original by defining "insurer" to mean a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts, whereas the original defines the term to mean such an entity regulated by the Texas Department of Insurance (TDI) and so engaged.

C.S.S.B. 425 omits from the definition of "insurer" two entities included in the definition in the original: a certified self-insurer and a certified self-insurance group regulated under certain provisions of the Texas Workers' Compensation Act.

C.S.S.B. 425 contains a provision not included in the original requiring a fee collected for the filing of a new or amended certificate of insurance form to be deposited to the credit of the TDI operating account.