

By: Carona, et al.  
(Hancock)

S.B. No. 425

Substitute the following for S.B. No. 425:

By: Hancock

C.S.S.B. No. 425

A BILL TO BE ENTITLED

AN ACT

relating to property and casualty certificates of insurance and approval of property and casualty certificate of insurance forms by the Texas Department of Insurance; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1811 to read as follows:

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person required to hold a license as a property and casualty agent or surplus lines agent.

(2) "Certificate holder" means a person, other than a policyholder:

(A) who is designated on a certificate of insurance as a certificate holder; or

(B) to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) "Certificate of insurance" means a document, instrument, or record, including an electronic record, no matter how titled or described, that is 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. The term does not include an insurance binder

1 or policy form.

2 (4) "Electronic record" has the meaning assigned by  
3 Section 322.002, Business & Commerce Code.

4 (5) "Insurance" means an insurance contract for  
5 property or casualty insurance.

6 (6) "Insurer" means a company or insurance carrier  
7 that is engaged in the business of making property or casualty  
8 insurance contracts. The term includes:

9 (A) a stock fire or casualty insurance company;

10 (B) a mutual fire or casualty insurance company;

11 (C) a Mexican casualty insurance company;

12 (D) a Lloyd's plan;

13 (E) a reciprocal or interinsurance exchange;

14 (F) a county mutual insurance company;

15 (G) a farm mutual insurance company;

16 (H) a risk retention group;

17 (I) the Medical Liability Insurance Joint  
18 Underwriting Association under Chapter 2203;

19 (J) the Texas Windstorm Insurance Association  
20 under Chapter 2210;

21 (K) the FAIR Plan Association under Chapter 2211;

22 (L) an eligible surplus lines insurer; and

23 (M) any other insurer authorized to write  
24 property or casualty insurance in this state.

25 (7) "Lender" has the meaning assigned by Section  
26 549.001.

27 (8) "Person" means:

1           (A) an individual; or

2           (B) a partnership, corporation, limited  
3 liability company, association, trust, or other legal entity,  
4 including an insurer or a political subdivision or agency of this  
5 state.

6           (9) "Policyholder" means a person who has contracted  
7 with a property or casualty insurer for insurance coverage.

8           (10) "Record" has the meaning assigned by Section  
9 322.002, Business & Commerce Code.

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

15          (b) This chapter may not be construed to apply to:

16           (1) a statement, summary, or evidence of property  
17 insurance required by a lender in a lending transaction involving:

18                   (A) a mortgage;

19                   (B) a lien;

20                   (C) a deed of trust; or

21                   (D) any other security interest in real or  
22 personal property as security for a loan;

23           (2) a certificate issued under:

24                   (A) a group or individual policy for:

25                           (i) life insurance;

26                           (ii) credit insurance;

27                           (iii) accident and health insurance;

1 (iv) long-term care benefit insurance; or

2 (v) Medicare supplement insurance; or

3 (B) an annuity contract; or

4 (3) standard proof of motor vehicle liability  
5 insurance under Section 601.081, Transportation Code.

6 Sec. 1811.003. RULES. The commissioner may adopt rules as  
7 necessary or proper to accomplish the purposes of this chapter.

8 Sec. 1811.004. FILING FEE. (a) The department may collect a  
9 fee in an amount determined by the commissioner for the filing of a  
10 new or amended certificate of insurance form under this chapter.

11 (b) The fee may not exceed \$100.

12 (c) A fee collected under this section shall be deposited to  
13 the credit of the Texas Department of Insurance operating account.

14 [Sections 1811.005-1811.050 reserved for expansion]

15 SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

16 Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS  
17 OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER.

18 (a) A property or casualty insurer or agent may not issue a  
19 certificate of insurance or any other type of document purporting  
20 to be a certificate of insurance if the certificate or document  
21 alters, amends, or extends the coverage or terms and conditions  
22 provided by the insurance policy referenced on the certificate or  
23 document.

24 (b) A certificate of insurance or any other type of document  
25 may not convey a contractual right to a certificate holder.

26 Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE  
27 FORMS. (a) An insurer or an agent may not issue a certificate of

1 insurance unless the form of the certificate:

2 (1) has been filed with and approved by the department  
3 under Section 1811.101; or

4 (2) is a standard form deemed approved by the  
5 department under Section 1811.103.

6 (b) A person may not execute, issue, or require the issuance  
7 of a certificate of insurance for risks located in this state,  
8 unless the certificate of insurance form has been filed with and  
9 approved by the department.

10 Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED  
11 CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a  
12 certificate of insurance form approved under Section 1811.101  
13 unless the alteration or modification is approved by the  
14 department.

15 Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE  
16 OF INSURANCE. A person may not require the issuance of a  
17 certificate of insurance from an insurer, agent, or policyholder  
18 that contains any false or misleading information concerning the  
19 policy of insurance to which the certificate refers.

20 Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE  
21 OF INSURANCE. A person may not require an agent or insurer, either  
22 in addition to or in lieu of a certificate of insurance, to issue  
23 any other document or correspondence, instrument, or record,  
24 including an electronic record, that is inconsistent with this  
25 chapter.

26 Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE  
27 FORMS. A person who receives written notice under Section 1811.102

1 that a certificate of insurance form filed under this chapter has  
2 been disapproved by the commissioner shall immediately stop using  
3 the form.

4 [Sections 1811.057-1811.100 reserved for expansion]

5 SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

6 Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except as  
7 provided by Subsection (b), an insurer or agent may not deliver or  
8 issue for delivery in this state a certificate of insurance unless  
9 the certificate's form:

10 (1) has been filed with and approved by the  
11 commissioner; and

12 (2) contains the phrase "for information purposes  
13 only" or similar language.

14 (b) If a certificate of insurance form does not contain the  
15 language required by Subsection (a)(2), the commissioner may  
16 approve the form if the form states:

17 (1) that the certificate of insurance does not confer  
18 any rights or obligations other than the rights and obligations  
19 conveyed by the policy referenced on the form; and

20 (2) that the terms of the policy control over the terms  
21 of the certificate of insurance.

22 (c) A filed form is approved at the expiration of 60 days  
23 after the date the form is filed unless the commissioner by order  
24 approves or disapproves the form during the 60-day period beginning  
25 the date the form is filed. The commissioner's approval of a filed  
26 form constitutes a waiver of any unexpired portion of the 60-day  
27 period.

1       (d) The commissioner may extend by not more than 10 days the  
2 60-day period described by Subsection (c) during which the  
3 commissioner may approve or disapprove a form filed by an insurer or  
4 agent. The commissioner shall notify the insurer or agent of the  
5 extension before the expiration of the 60-day period.

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

10       (f) A person may not use a form unless the form has been  
11 filed with and approved by the commissioner.

12       Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF  
13 APPROVAL. (a) The commissioner shall disapprove a form filed under  
14 Section 1811.101 or withdraw approval of a form if the form:

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

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

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

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

25       (b) The commissioner may not disapprove a form filed under  
26 Section 1811.101 or withdraw approval of a form based solely on the  
27 fact that the form contains language described by Section

1 1811.101(b).

2 (c) An order issued by the commissioner disapproving a form,  
3 or a notice of the commissioner's intention to withdraw approval of  
4 a form, must state the grounds for the disapproval or withdrawal of  
5 approval in sufficient detail to reasonably inform the person  
6 filing the form of those grounds and the changes to the form  
7 necessary to obtain approval.

8 (d) An order disapproving a form or withdrawing approval of  
9 a form takes effect on the date prescribed by the commissioner in  
10 the order. The commissioner may not prescribe a date earlier than  
11 the 30th day after the effective date of the order, as prescribed by  
12 the commissioner.

13 Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A  
14 standard certificate of insurance form promulgated by the  
15 Association for Cooperative Operations Research and Development,  
16 the American Association of Insurance Services, or the Insurance  
17 Services Office (ISO) is deemed approved on the date the form is  
18 filed with the department. Notwithstanding this section, the  
19 commissioner may withdraw approval of a standard form under Section  
20 1811.102.

21 Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A  
22 certificate of insurance form and any supporting information filed  
23 with the department under this subchapter is open to public  
24 inspection as of the date of the filing.

25 [Sections 1811.105-1811.150 reserved for expansion]

26 SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

27 Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A



1 certificate of insurance form that has been approved by the  
2 commissioner and properly executed and issued by a property and  
3 casualty insurer or an agent constitutes a confirmation that the  
4 referenced insurance policy has been issued or that coverage has  
5 been bound. This section applies regardless of whether the face of  
6 the certificate includes the phrase "for information purposes only"  
7 or similar language.

8 Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF  
9 INSURANCE. A certificate of insurance is not a policy of insurance  
10 and does not amend, extend, or alter the coverage afforded by the  
11 referenced insurance policy.

12 Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF  
13 INSURANCE. A certificate of insurance does not confer to a  
14 certificate holder new or additional rights beyond what the  
15 referenced policy or any executed endorsement of insurance  
16 provides.

17 Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate  
18 of insurance may not contain a reference to a legal or insurance  
19 requirement contained in a contract other than the underlying  
20 contract of insurance, including a contract for construction or  
21 services.

22 Sec. 1811.155. NOTICE. (a) A person may have a legal right  
23 to notice of cancellation, nonrenewal, or material change or any  
24 similar notice concerning a policy of insurance only if:

25 (1) the person is named within the policy or an  
26 endorsement to the policy; and

27 (2) the policy or endorsement or a law, including a

1 rule, of this state requires notice to be provided.

2 (b) A certificate of insurance may not alter the terms and  
3 conditions of the notice required by a policy of insurance or the  
4 law of this state.

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

9 [Sections 1811.157-1811.200 reserved for expansion]

10 SUBCHAPTER E. ENFORCEMENT AND REMEDIES

11 Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the  
12 commissioner has reason to believe that an insurer or agent has  
13 violated or is threatening to violate this chapter or a rule adopted  
14 under this chapter, the commissioner may:

15 (1) issue a cease and desist order;

16 (2) seek an injunction under Section 1811.203;

17 (3) request that the attorney general recover a civil  
18 penalty under Section 1811.203;

19 (4) impose sanctions on the insurer or agent as  
20 provided by Chapter 82; or

21 (5) take any combination of those actions.

22 (b) This section does not prevent or limit any action by or  
23 remedy available to the commissioner under applicable law.

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

27 (1) an insurer or agent has violated or is threatening

1 to violate this chapter or a rule adopted under this chapter; or

2 (2) an insurer or agent has engaged in or is  
3 threatening to engage in an unfair act related to a certificate of  
4 insurance.

5 (b) The commissioner shall serve on the insurer or agent a  
6 statement of charges and a notice of hearing in the form provided by  
7 Section 2001.052, Government Code.

8 (c) A hearing under this section is a contested case under  
9 Chapter 2001, Government Code.

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

14 (b) The commissioner may request that the attorney general  
15 institute a civil suit in a district court in Travis County for  
16 injunctive relief to restrain a person, including an insurer or  
17 agent, from continuing a violation or threat of violation of  
18 Subchapter B. On application for injunctive relief and a finding  
19 that a person, including an insurer or agent, is violating or  
20 threatening to violate Subchapter B, the district court shall grant  
21 the injunctive relief and issue an injunction without bond.

22 (c) On request by the commissioner, the attorney general  
23 shall institute and conduct a civil suit in the name of the state  
24 for injunctive relief, to recover a civil penalty, or for both  
25 injunctive relief and a civil penalty, as authorized under this  
26 subchapter.

27 Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The

1 commissioner may:

2 (1) investigate a complaint or allegation of specific  
3 violations by a person, including an insurer or agent, who has  
4 allegedly engaged in an act or practice prohibited by Subchapter B;  
5 and

6 (2) enforce the provisions of this chapter.

7 (b) If the commissioner has reason to believe that a person,  
8 including an insurer or agent, is performing an act in violation of  
9 Subchapter B, the person shall immediately provide to the  
10 commissioner, on written request of the commissioner, information  
11 relating to that act.

12 SECTION 2. The changes in law made by this Act apply only to  
13 a certificate of insurance issued on or after January 1, 2012. A  
14 certificate of insurance issued before January 1, 2012, is governed  
15 by the law in effect immediately before the effective date of this  
16 Act, and that law is continued in effect for that purpose.

17 SECTION 3. This Act takes effect September 1, 2011.