

1-1 By: Carona, Hegar S.B. No. 425
1-2 (In the Senate - Filed January 27, 2011; February 2, 2011,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 7, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 7, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 425 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to property and casualty certificates of insurance and
1-11 approval of property and casualty certificate of insurance forms by
1-12 the Texas Department of Insurance; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle A, Title 10, Insurance Code, is amended
1-15 by adding Chapter 1811 to read as follows:

1-16 CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE
1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 1811.001. DEFINITIONS. In this chapter:

1-19 (1) "Agent" means a person required to hold a license
1-20 as a property and casualty agent or surplus lines agent.

1-21 (2) "Certificate holder" means a person, other than a
1-22 policyholder:

1-23 (A) who is designated on a certificate of
1-24 insurance as a certificate holder; or

1-25 (B) to whom a certificate of insurance has been
1-26 issued by an insurer or agent at the request of the policyholder.

1-27 (3) "Certificate of insurance" means a document,
1-28 instrument, or record, including an electronic record, no matter
1-29 how titled or described, that is prepared by an insurer or agent and
1-30 issued to a third person not a party to the subject insurance
1-31 contract, as a statement or summary of property or casualty
1-32 insurance coverage. The term does not include an insurance binder
1-33 or policy form.

1-34 (4) "Electronic record" has the meaning assigned by
1-35 Section 322.002, Business & Commerce Code.

1-36 (5) "Insurance" means an insurance contract for
1-37 property or casualty insurance.

1-38 (6) "Insurer" means a company or insurance carrier
1-39 regulated by the department and engaged in the business of making
1-40 property or casualty insurance contracts. The term includes:

1-41 (A) a stock fire or casualty insurance company;

1-42 (B) a mutual fire or casualty insurance company;

1-43 (C) a Mexican casualty insurance company;

1-44 (D) a Lloyd's plan;

1-45 (E) a reciprocal or interinsurance exchange;

1-46 (F) a county mutual insurance company;

1-47 (G) a farm mutual insurance company;

1-48 (H) a risk retention group;

1-49 (I) a certified self-insurer under Chapter 407,
1-50 Labor Code;

1-51 (J) a certified self-insurance group under
1-52 Chapter 407A, Labor Code;

1-53 (K) the Medical Liability Insurance Joint
1-54 Underwriting Association under Chapter 2203;

1-55 (L) the Texas Windstorm Insurance Association
1-56 under Chapter 2210;

1-57 (M) the FAIR Plan Association under Chapter 2211;

1-58 (N) an eligible surplus lines insurer; and

1-59 (O) any other insurer authorized to write
1-60 property or casualty insurance in this state.

1-61 (7) "Lender" has the meaning assigned by Section
1-62 549.001.

1-63 (8) "Person" means:

2-1 (A) an individual; or
 2-2 (B) a partnership, corporation, limited
 2-3 liability company, association, trust, or other legal entity,
 2-4 including an insurer or a political subdivision or agency of this
 2-5 state.
 2-6 (9) "Policyholder" means a person who has contracted
 2-7 with a property or casualty insurer for insurance coverage.
 2-8 (10) "Record" has the meaning assigned by Section
 2-9 322.002, Business & Commerce Code.
 2-10 Sec. 1811.002. APPLICABILITY. (a) This chapter applies to
 2-11 a certificate holder, policyholder, insurer, or agent with regard
 2-12 to a certificate of insurance issued on property or casualty
 2-13 operations or a risk located in this state, regardless of where the
 2-14 certificate holder, policyholder, insurer, or agent is located.
 2-15 (b) This chapter may not be construed to apply to:
 2-16 (1) a statement, summary, or evidence of property
 2-17 insurance required by a lender in a lending transaction involving:
 2-18 (A) a mortgage;
 2-19 (B) a lien;
 2-20 (C) a deed of trust; or
 2-21 (D) any other security interest in real or
 2-22 personal property as security for a loan;
 2-23 (2) a certificate issued under:
 2-24 (A) a group or individual policy for:
 2-25 (i) life insurance;
 2-26 (ii) credit insurance;
 2-27 (iii) accident and health insurance;
 2-28 (iv) long-term care benefit insurance; or
 2-29 (v) Medicare supplement insurance; or
 2-30 (B) an annuity contract; or
 2-31 (3) standard proof of motor vehicle liability
 2-32 insurance under Section 601.081, Transportation Code.
 2-33 Sec. 1811.003. RULES. The commissioner may adopt rules as
 2-34 necessary or proper to accomplish the purposes of this chapter.
 2-35 Sec. 1811.004. FILING FEE. (a) The department may collect
 2-36 a fee in an amount determined by the commissioner for the filing of
 2-37 a new or amended certificate of insurance form under this chapter.
 2-38 (b) The fee may not exceed \$100.
 2-39 [Sections 1811.005-1811.050 reserved for expansion]
 2-40 SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES
 2-41 Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS
 2-42 OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER.
 2-43 (a) A property or casualty insurer or agent may not issue a
 2-44 certificate of insurance or any other type of document purporting
 2-45 to be a certificate of insurance if the certificate or document
 2-46 alters, amends, or extends the coverage or terms and conditions
 2-47 provided by the insurance policy referenced on the certificate or
 2-48 document.
 2-49 (b) A certificate of insurance or any other type of document
 2-50 may not convey a contractual right to a certificate holder.
 2-51 Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE
 2-52 FORMS. (a) An insurer or an agent may not issue a certificate of
 2-53 insurance unless the form of the certificate:
 2-54 (1) has been filed with and approved by the department
 2-55 under Section 1811.101; or
 2-56 (2) is a standard form deemed approved by the
 2-57 department under Section 1811.103.
 2-58 (b) A person may not prepare, issue, or require the issuance
 2-59 of a certificate of insurance for risks located in this state unless
 2-60 the certificate of insurance form has been filed with and approved
 2-61 by the department.
 2-62 Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED
 2-63 CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a
 2-64 certificate of insurance form approved under Section 1811.101
 2-65 unless the alteration or modification is approved by the
 2-66 department.
 2-67 Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE
 2-68 OF INSURANCE. A person may not require the issuance of a
 2-69 certificate of insurance from an insurer, agent, or policyholder

3-1 that contains any false or misleading information concerning the
 3-2 policy of insurance to which the certificate refers.

3-3 Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE
 3-4 OF INSURANCE. A person may not require an agent or insurer, either
 3-5 in addition to or in lieu of a certificate of insurance, to issue
 3-6 any other document or correspondence, instrument, or record,
 3-7 including an electronic record, that is inconsistent with this
 3-8 chapter.

3-9 Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE
 3-10 FORMS. A person who receives written notice under Section 1811.102
 3-11 that a certificate of insurance form filed under this chapter has
 3-12 been disapproved by the commissioner shall immediately stop using
 3-13 the form.

3-14 [Sections 1811.057-1811.100 reserved for expansion]

3-15 SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

3-16 Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except
 3-17 as provided by Subsection (b), an insurer or agent may not deliver
 3-18 or issue for delivery in this state a certificate of insurance
 3-19 unless the certificate's form:

3-20 (1) has been filed with and approved by the
 3-21 commissioner; and

3-22 (2) contains the phrase "for information purposes
 3-23 only" or similar language.

3-24 (b) If a certificate of insurance form does not contain the
 3-25 language required by Subsection (a)(2), the commissioner may
 3-26 approve the form if the form states:

3-27 (1) that the certificate of insurance does not confer
 3-28 any rights or obligations other than the rights and obligations
 3-29 conveyed by the policy referenced on the form; and

3-30 (2) that the terms of the policy control over the terms
 3-31 of the certificate of insurance.

3-32 (c) A filed form is approved at the expiration of 60 days
 3-33 after the date the form is filed unless the commissioner by order
 3-34 approves or disapproves the form during the 60-day period beginning
 3-35 the date the form is filed. The commissioner's approval of a filed
 3-36 form constitutes a waiver of any unexpired portion of the 60-day
 3-37 period.

3-38 (d) The commissioner may extend by not more than 10 days the
 3-39 60-day period described by Subsection (c) during which the
 3-40 commissioner may approve or disapprove a form filed by an insurer or
 3-41 agent. The commissioner shall notify the insurer or agent of the
 3-42 extension before the expiration of the 60-day period.

3-43 (e) A filed form for which an extension has been granted
 3-44 under Subsection (d) is considered approved at the expiration of
 3-45 the extension period described by that subsection absent an earlier
 3-46 approval or disapproval of the form.

3-47 (f) A person may not use a form unless the form has been
 3-48 filed with and approved by the commissioner.

3-49 Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF
 3-50 APPROVAL. (a) The commissioner shall disapprove a form filed
 3-51 under Section 1811.101 or withdraw approval of a form if the form:

3-52 (1) contains a provision or has a title or heading that
 3-53 is misleading, is deceptive, or violates public policy;

3-54 (2) violates any state law, including a rule adopted
 3-55 under this code;

3-56 (3) requires an agent to provide certification of
 3-57 insurance coverage that is not available in the line or type of
 3-58 insurance coverage referenced on the form; or

3-59 (4) directly or indirectly requires the commissioner
 3-60 to make a coverage determination under a policy of insurance or
 3-61 insurance transaction.

3-62 (b) The commissioner may not disapprove a form filed under
 3-63 Section 1811.101 or withdraw approval of a form based solely on the
 3-64 fact that the form contains language described by Section
 3-65 1811.101(b).

3-66 (c) An order issued by the commissioner disapproving a form,
 3-67 or a notice of the commissioner's intention to withdraw approval of
 3-68 a form, must state the grounds for the disapproval or withdrawal of
 3-69 approval in sufficient detail to reasonably inform the person

4-1 filing the form of those grounds and the changes to the form
 4-2 necessary to obtain approval.

4-3 (d) An order disapproving a form or withdrawing approval of
 4-4 a form takes effect on the date prescribed by the commissioner in
 4-5 the order. The commissioner may not prescribe a date earlier than
 4-6 the 30th day after the effective date of the order, as prescribed by
 4-7 the commissioner.

4-8 Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A
 4-9 standard certificate of insurance form promulgated by the
 4-10 Association for Cooperative Operations Research and Development,
 4-11 the American Association of Insurance Services, or the Insurance
 4-12 Services Office (ISO) is deemed approved on the date the form is
 4-13 filed with the department. Notwithstanding this section, the
 4-14 commissioner may withdraw approval of a standard form under Section
 4-15 1811.102.

4-16 Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A
 4-17 certificate of insurance form and any supporting information filed
 4-18 with the department under this subchapter is open to public
 4-19 inspection as of the date of the filing.

4-20 [Sections 1811.105-1811.150 reserved for expansion]

4-21 SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

4-22 Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A
 4-23 certificate of insurance form that has been approved by the
 4-24 commissioner and properly executed and issued by a property and
 4-25 casualty insurer or an agent constitutes a confirmation that the
 4-26 referenced insurance policy has been issued or that coverage has
 4-27 been bound. This section applies regardless of whether the face of
 4-28 the certificate includes the phrase "for information purposes only"
 4-29 or similar language.

4-30 Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF
 4-31 INSURANCE. A certificate of insurance is not a policy of insurance
 4-32 and does not amend, extend, or alter the coverage afforded by the
 4-33 referenced insurance policy.

4-34 Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF
 4-35 INSURANCE. A certificate of insurance does not confer to a
 4-36 certificate holder new or additional rights beyond what the
 4-37 referenced policy or any executed endorsement of insurance
 4-38 provides.

4-39 Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate
 4-40 of insurance may not contain a reference to a legal or insurance
 4-41 requirement contained in a contract other than the underlying
 4-42 contract of insurance, including a contract for construction or
 4-43 services.

4-44 Sec. 1811.155. NOTICE. (a) A person may have a legal right
 4-45 to notice of cancellation, nonrenewal, or material change or any
 4-46 similar notice concerning a policy of insurance only if:

4-47 (1) the person is named within the policy or an
 4-48 endorsement to the policy; and

4-49 (2) the policy or endorsement or a law, including a
 4-50 rule, of this state requires notice to be provided.

4-51 (b) A certificate of insurance may not alter the terms and
 4-52 conditions of the notice required by a policy of insurance or the
 4-53 law of this state.

4-54 Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION
 4-55 OF CHAPTER. A certificate of insurance that is prepared, issued, or
 4-56 required and that is in violation of this chapter is void and has no
 4-57 effect.

4-58 [Sections 1811.157-1811.200 reserved for expansion]

4-59 SUBCHAPTER E. ENFORCEMENT AND REMEDIES

4-60 Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the
 4-61 commissioner has reason to believe that an insurer or agent has
 4-62 violated or is threatening to violate this chapter or a rule adopted
 4-63 under this chapter, the commissioner may:

4-64 (1) issue a cease and desist order;

4-65 (2) seek an injunction under Section 1811.203;

4-66 (3) request that the attorney general recover a civil
 4-67 penalty under Section 1811.203;

4-68 (4) impose sanctions on the insurer or agent as
 4-69 provided by Chapter 82; or

5-1 (5) take any combination of those actions.

5-2 (b) This section does not prevent or limit any action by or
5-3 remedy available to the commissioner under applicable law.

5-4 Sec. 1811.202. HEARING; NOTICE. (a) The commissioner may
5-5 hold a hearing on whether to issue a cease and desist order under
5-6 Section 1811.201 if the commissioner has reason to believe that:

5-7 (1) an insurer or agent has violated or is threatening
5-8 to violate this chapter or a rule adopted under this chapter; or

5-9 (2) an insurer or agent has engaged in or is
5-10 threatening to engage in an unfair act related to a certificate of
5-11 insurance.

5-12 (b) The commissioner shall serve on the insurer or agent a
5-13 statement of charges and a notice of hearing in the form provided by
5-14 Section 2001.052, Government Code.

5-15 (c) A hearing under this section is a contested case under
5-16 Chapter 2001, Government Code.

5-17 Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) A person,
5-18 including an insurer or agent, who wilfully violates this chapter
5-19 is subject to a civil penalty of not more than \$1,000 for each
5-20 violation.

5-21 (b) The commissioner may request that the attorney general
5-22 institute a civil suit in a district court in Travis County for
5-23 injunctive relief to restrain a person, including an insurer or
5-24 agent, from continuing a violation or threat of violation of
5-25 Subchapter B. On application for injunctive relief and a finding
5-26 that a person, including an insurer or agent, is violating or
5-27 threatening to violate Subchapter B, the district court shall grant
5-28 the injunctive relief and issue an injunction without bond.

5-29 (c) On request by the commissioner, the attorney general
5-30 shall institute and conduct a civil suit in the name of the state
5-31 for injunctive relief, to recover a civil penalty, or for both
5-32 injunctive relief and a civil penalty, as authorized under this
5-33 subchapter.

5-34 Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The
5-35 commissioner may:

5-36 (1) investigate a complaint or allegation of specific
5-37 violations by a person, including an insurer or agent, who has
5-38 allegedly engaged in an act or practice prohibited by Subchapter B;
5-39 and

5-40 (2) enforce the provisions of this chapter.

5-41 (b) If the commissioner has reason to believe that a person,
5-42 including an insurer or agent, is performing an act in violation of
5-43 Subchapter B, the person shall immediately provide to the
5-44 commissioner, on written request of the commissioner, information
5-45 relating to that act.

5-46 SECTION 2. The changes in law made by this Act apply only to
5-47 a certificate of insurance issued on or after January 1, 2012. A
5-48 certificate of insurance issued before January 1, 2012, is governed
5-49 by the law in effect immediately before the effective date of this
5-50 Act, and that law is continued in effect for that purpose.

5-51 SECTION 3. This Act takes effect September 1, 2011.

5-52 * * * * *