S T A T E O F N E W Y O R K

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I N S E N A T E

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Introduced by Sens. SEWARD, FARLEY, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to certificates of insurance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new article 5 to read as follows:

ARTICLE 5

CERTIFICATES OF INSURANCE

SECTION 501. DEFINITIONS.
502. PROHIBITIONS.
503. APPLICABILITY.
504. ENFORCEMENT.
505. RULES AND REGULATIONS.

S 501. DEFINITIONS. FOR PURPOSES OF THIS SECTION:

(A) "CERTIFICATE" OR "CERTIFICATE OF INSURANCE" MEANS ANY DOCUMENT OR INSTRUMENT, NO MATTER HOW TITLED OR DESCRIBED, WHICH IS PREPARED OR ISSUED BY AN INSURER OR INSURANCE PRODUCER AS EVIDENCE OF PROPERTY OR CASUALTY INSURANCE COVERAGE. "CERTIFICATE" OR "CERTIFICATE OF INSURANCE" SHALL NOT INCLUDE A POLICY OF INSURANCE OR INSURANCE BINDER, AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE TO WHICH THE CERTIFICATE MAKES REFERENCE, AND IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY. A CERTIFICATE OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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INSURANCE SHALL NOT CONFER TO ANY PERSON NEW OR ADDITIONAL RIGHTS BEYOND WHAT THE REFERENCED POLICY OF INSURANCE EXPRESSLY PROVIDES.

(B) "CERTIFICATE HOLDER" MEANS ANY PERSON, OTHER THAN A POLICYHOLDER, THAT IS IDENTIFIED ON THE CERTIFICATE AS A CERTIFICATE HOLDER.

(C) "INSURANCE PRODUCER" HAS THE MEANING ASCRIBED TO IT BY SUBSECTION (K) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS CHAPTER.

(D) "INSURER" MEANS ANY PERSON "DOING AN INSURANCE BUSINESS" AS SUCH PHRASE IS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED ONE OF THIS CHAPTER.

(E) "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY, BUT SHALL NOT INCLUDE ANY GOVERNMENTAL ENTITY, AS THAT TERM IS DEFINED IN THIS SECTION.

(F) "GOVERNMENTAL ENTITY" MEANS ANY PUBLIC ENTITY AS DEFINED IN PARAGRAPH FIFTY-ONE OF SUBSECTION (A) OF SECTION ONE HUNDRED SEVEN OF THIS CHAPTER, ANY STATE AUTHORITY AS DEFINED IN SUBDIVISION ONE OF SECTION TWO OF THE PUBLIC AUTHORITIES LAW, ANY LOCAL AUTHORITY AS DEFINED IN SUBDIVISION TWO OF SECTION TWO OF THE PUBLIC AUTHORITIES LAW, AND ANY INTERSTATE OR INTERNATIONAL AUTHORITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWO OF THE PUBLIC AUTHORITIES LAW.

(G) "POLICYHOLDER" MEANS A PERSON WHO HAS CONTRACTED WITH A PROPERTY OR CASUALTY INSURER FOR INSURANCE COVERAGE.

S 502. PROHIBITIONS. (A) NO PERSON OR GOVERNMENTAL ENTITY SHALL PREPARE, ISSUE, KNOWINGLY REQUEST, OR REQUIRE THE ISSUANCE OF A CERTIFICATE UNLESS THE CERTIFICATE IS:

(1) A STANDARD CERTIFICATE OF INSURANCE FORM PROMULGATED AND AUTHORIZED FOR USE BY THE ASSOCIATION FOR COOPERATIVE OPERATIONS RESEARCH AND DEVELOPMENT (ACORD) OR THE INSURANCE SERVICES OFFICE (ISO);

(2) A FORM PROMULGATED BY THE INSURANCE COMPANY THAT HAS UNDERWRITTEN THE POLICY REFERENCED IN THE CERTIFICATE OF INSURANCE; OR

(3) A FORM PREPARED, ISSUED, OR REQUESTED AS EVIDENCE OF INSURANCE IN CONNECTION WITH A COMMERCIAL LENDING TRANSACTION IN WHICH THE UNDERLYING PROPERTY SERVES AS THE PRIMARY COLLATERAL SECURING THE BORROWER'S REPAYMENT OF THE LOAN, INCLUDING, BUT NOT LIMITED TO A FORM PROMULGATED BY THE MORTGAGE BANKERS ASSOCIATION (MBA).

(B) NO PERSON OR GOVERNMENTAL ENTITY SHALL ALTER, MODIFY, KNOWINGLY REQUEST, OR REQUIRE THE ALTERATION OF A CERTIFICATE OF INSURANCE FORM.

(C) NO PERSON OR GOVERNMENTAL ENTITY SHALL KNOWINGLY REQUEST OR REQUIRE THAT A CERTIFICATE OF INSURANCE FORM CONTAIN ADDITIONAL TERMS, CONDITIONS, OR LANGUAGE OF ANY KIND NOT FOUND IN THE INSURANCE POLICY TO WHICH THE CERTIFICATE MAKES REFERENCE OR TO AN ENDORSEMENT TO SUCH POLICY.

(D) NO PERSON OR GOVERNMENTAL ENTITY SHALL KNOWINGLY REQUEST OR REQUIRE EITHER IN ADDITION TO OR IN LIEU OF A CERTIFICATE OF INSURANCE, AN OPINION LETTER, WARRANTY, STATEMENT, SUPPLEMENTAL CERTIFICATE OR ANY OTHER DOCUMENT OR CORRESPONDENCE THAT IS INCONSISTENT WITH THE PROHIBITIONS OF THIS SECTION. HOWEVER, AN INSURER OR INSURANCE PRODUCER MAY PREPARE OR ISSUE AN ADDENDUM TO A CERTIFICATE THAT CLARIFIES AND EXPLAINS THE COVERAGE PROVIDED BY A POLICY OF INSURANCE AND OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION, PROVIDED SUCH AUTHORITY IS GRANTED TO THE PRODUCER BY THE INSURER.

(E) NO PERSON OR GOVERNMENTAL ENTITY SHALL KNOWINGLY REQUEST OR REQUIRE THAT A CERTIFICATE OF INSURANCE CONTAIN REFERENCES TO A CONTRACT OTHER THAN THE INSURANCE POLICY, OR WARRANT THAT THE INSURANCE POLICIES REFERENCED IN THE CERTIFICATE COMPLY WITH THE REQUIREMENTS OF A PARTICULAR CONTRACT PROVIDED HOWEVER A CERTIFICATE MAY INCLUDE A CONTRACT TITLE OR DESCRIPTION FOR THE SOLE PURPOSE OF IDENTIFYING THE PROJECT FOR

WHICH THE CERTIFICATE WAS ISSUED, BUT SUCH INCLUSION SHALL NOT BE INTERPRETED AS WARRANTING THAT THE INSURANCE POLICIES REFERENCED IN THE CERTIFICATE COMPLY WITH THE REQUIREMENTS OF SUCH CONTRACT.

(F) NO PERSON OR GOVERNMENTAL ENTITY SHALL KNOWINGLY REQUEST OR REQUIRE, PREPARE OR ISSUE A CERTIFICATE OF INSURANCE THAT: (I) DOES NOT ACCURATELY STATE THE TERMS OF COVERAGE PROVIDED BY THE POLICY OR POLICIES OF INSURANCE TO WHICH THE CERTIFICATE MAKES REFERENCE; (II) PURPORTS TO ALTER, AMEND, EXTEND, OR MISREPRESENT THE TERMS OF COVERAGE TO WHICH THE CERTIFICATE MAKES REFERENCE; OR (III) PURPORTS TO CONFER TO ANY PERSON NEW OR ADDITIONAL RIGHTS BEYOND WHAT THE REFERENCED POLICY OF INSURANCE EXPRESSLY PROVIDES.

S 503. APPLICABILITY. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CERTIFICATE HOLDERS, POLICYHOLDERS, INSURERS, INSURANCE PRODUCERS, OR ANY OTHER PERSON AND TO CERTIFICATE OF INSURANCE FORMS ISSUED AS EVIDENCE OF INSURANCE COVERAGES ON PROPERTY, OPERATIONS, OR RISKS LOCATED IN THIS STATE, REGARDLESS OF WHERE THE CERTIFICATE HOLDER, POLICYHOLDER, INSURER, OR INSURANCE PRODUCER IS LOCATED.

S 504. ENFORCEMENT. (A) THE SUPERINTENDENT SHALL HAVE THE POWER UNDER SECTION FOUR HUNDRED THREE OF THE FINANCIAL SERVICES LAW TO EXAMINE AND INVESTIGATE THE ACTIVITIES OF ANY PERSON THAT THE SUPERINTENDENT REASONABLY BELIEVES HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS ARTICLE. THE SUPERINTENDENT SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS SECTION AND IMPOSE ANY AUTHORIZED PENALTY OR REMEDY AS PROVIDED UNDER SECTION FOUR HUNDRED EIGHT OF THE FINANCIAL SERVICES LAW AGAINST ANY PERSON WHO VIOLATES THIS ARTICLE.

(B) THE OFFICE OF THE STATE INSPECTOR GENERAL SHALL HAVE THE POWER PURSUANT TO SECTION FIFTY-THREE OF THE EXECUTIVE LAW TO INVESTIGATE ANY GOVERNMENTAL ENTITY THAT IS CONSIDERED A COVERED AGENCY UNDER SECTION FIFTY-ONE OF THE EXECUTIVE LAW THAT HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS ARTICLE. IF A GOVERNMENTAL ENTITY NOT CONSIDERED A COVERED AGENCY UNDER SECTION FIFTY-ONE OF THE EXECUTIVE LAW HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS ARTICLE, THAT ENTITY'S INSPECTOR GENERAL, OTHER COMPLIANCE OR INTERNAL INVESTIGATIVE UNIT OR OTHER OFFICIAL OR ENTITY WITH PROPER AUTHORITY SHALL HAVE THE POWER TO INVESTIGATE SUCH ENTITY.

S 505. RULES AND REGULATIONS. THE SUPERINTENDENT MAY ADOPT RULES OR REGULATIONS AS HE OR SHE CONSIDERS APPROPRIATE TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.