

4616

2015-2016 Regular Sessions

I N   A S S E M B L Y

February 4, 2015

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Introduced by M. of A. MORELLE -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to certificates of insurance; and to amend chapter 552 of the laws of 2014 amending the insurance law relating to certificates of insurance, in relation to the effectiveness thereof

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

1     Section 1. Article 5 of the insurance law, as added by chapter 552 of  
2 the laws of 2014, is amended to read as follows:

3     ARTICLE 5

4     CERTIFICATES OF INSURANCE

5     Section 501. Definitions.

6                     502. Prohibitions.

7                     503. [Applicability.

8                     504.] Enforcement.

9                     [505.] 504. Rules and regulations.

10     S 501. Definitions. For purposes of this [section] ARTICLE:

11     (a) "Certificate" or "certificate of insurance" means any document or  
12 instrument, OR ADDENDUM THERETO no matter how titled or described,  
13 [which is] prepared or issued by an insurer or insurance producer as  
14 evidence of [property or casualty] PROPERTY/CASUALTY insurance coverage.  
15 "Certificate" or "certificate of insurance" shall not include a policy  
16 of insurance or AN insurance binder[, and does not amend, extend or  
17 alter the coverage provided by the policy of insurance to which the  
18 certificate makes reference, and is subject to all the terms, exclusions  
19 and conditions of such policy. A certificate of insurance shall not  
20 confer to any person new or additional rights beyond what the referenced  
21 policy of insurance expressly provides].

22     (b) "Certificate holder" means any person, other than a policyholder,  
23 that is identified on the certificate as a certificate holder.

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

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(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] WITHIN THE MEANING 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] OR ANY AGENCY, BOARD, BUREAU, COMMISSION, DEPARTMENT, DIVISION, INSTITUTION, OFFICE, OR PUBLIC AUTHORITY OF A STATE, FEDERAL OR FOREIGN GOVERNMENT.

(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 AND ANY INDIVIDUAL ACTING IN HIS OR HER CAPACITY AS AN EMPLOYEE, OFFICER, OR ELECTED OFFICIAL OF ANY SUCH GOVERNMENTAL ENTITY.

(g) "Policyholder" means a person who has contracted with [a property or casualty] AN insurer for PROPERTY/CASUALTY insurance coverage.

(H) "PROPERTY/CASUALTY INSURANCE" MEANS A KIND OF INSURANCE THAT IS EITHER A BASIC KIND OF INSURANCE OR A NON-BASIC KIND OF INSURANCE, AS SUCH TERMS ARE DEFINED IN SECTION FOUR THOUSAND ONE HUNDRED ONE OF THIS CHAPTER, BUT SHALL NOT INCLUDE A KIND OF INSURANCE SPECIFIED UNDER PARAGRAPH THREE OR THIRTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER.

S 502. Prohibitions. [(a) No person or governmental entity shall prepare, issue, request, or require the issuance of a certificate if such person or governmental entity knows that such certificate does not comply with the following provisions:

(1) The certificate is 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) The certificate is a form promulgated by the insurance company that has underwritten the policy referenced in the certificate of insurance; or

(3) The certificate is 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).

(4) The certificate is a form promulgated by a governmental entity that is considered a covered agency under section fifty-one of the executive law, provided such form has been approved for use by the superintendent.

(b) No person or governmental entity shall alter, modify, request, or require the alteration of a certificate of insurance form when such person or governmental entity knows that such alteration, modification, request or requirement is in violation of this article.

(c) No person or governmental entity shall 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 when

1 such person or governmental entity knows such request or requirement is  
2 in violation of this article.

3 (d) No person or governmental entity shall request or require either  
4 in addition to or in lieu of a certificate of insurance, an opinion  
5 letter, warranty, statement, supplemental certificate or any other docu-  
6 ment or correspondence that such person or governmental entity knows to  
7 be inconsistent with the prohibitions of this section. However, an  
8 insurer or insurance producer may prepare or issue an addendum to a  
9 certificate that clarifies and explains the coverage provided by a poli-  
10 cy of insurance and otherwise complies with the requirements of this  
11 section, provided such authority is granted to the producer by the  
12 insurer.

13 (e) No person or governmental entity shall request or require a  
14 certificate of insurance that such person or governmental entity knows  
15 contains references to a contract other than the insurance policy, or  
16 warrants that the insurance policies referenced in the certificate  
17 comply with the requirements of a particular contract provided however a  
18 certificate may include a contract title or description for the sole  
19 purpose of identifying the project for which the certificate was issued,  
20 but such inclusion shall not be interpreted as warranting that the  
21 insurance policies referenced in the certificate comply with the  
22 requirements of such contract.

23 (f) No person or governmental entity shall request or require, prepare  
24 or issue a certificate of insurance that such person or governmental  
25 entity knows: (i) does not accurately state the terms of coverage  
26 provided by the policy or policies of insurance to which the certificate  
27 makes reference; (ii) purports to alter, amend, extend, or misrepresent  
28 the terms of coverage to which the certificate makes reference; or (iii)  
29 purports to confer to any person new or additional rights beyond what  
30 the referenced policy of insurance expressly provides] IN THIS STATE:

31 (A) WITH RESPECT TO A CERTIFICATE OF INSURANCE EVIDENCING THAT A POLI-  
32 CY PROVIDES PERSONAL INJURY LIABILITY INSURANCE OR PROPERTY DAMAGE  
33 LIABILITY INSURANCE, AS DEFINED IN PARAGRAPHS THIRTEEN AND FOURTEEN OF  
34 SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS  
35 CHAPTER, NO PERSON OR GOVERNMENTAL ENTITY SHALL WILFULLY REQUIRE, AS A  
36 CONDITION OF AWARDED A CONTRACT FOR WORK, OR IF A CONTRACT HAS ALREADY  
37 BEEN AWARDED AS A CONDITION FOR WORK TO COMMENCE OR CONTINUE UNDER THE  
38 CONTRACT, OR IF THE CONTRACT HAS BEEN PERFORMED OR PARTIALLY PERFORMED  
39 AS A CONDITION FOR PAYMENT TO BE MADE UNDER THE CONTRACT, THE ISSUANCE  
40 OF A CERTIFICATE OF INSURANCE UNLESS THE CERTIFICATE IS:

41 (1) A FORM PROMULGATED BY THE INSURER ISSUING THE POLICY REFERENCED IN  
42 THE CERTIFICATE OF INSURANCE; OR

43 (2) A STANDARD CERTIFICATE OF INSURANCE FORM ISSUED BY AN INDUSTRY  
44 STANDARD-SETTING ORGANIZATION AND APPROVED FOR USE BY THE SUPERINTENDENT  
45 OR ANY OTHER FORM APPROVED FOR USE BY THE SUPERINTENDENT.

46 (B) NO PERSON OR GOVERNMENTAL ENTITY SHALL WILFULLY REQUIRE THE INCLU-  
47 SION OF TERMS, CONDITIONS OR LANGUAGE OF ANY KIND, INCLUDING WARRANTIES  
48 OR GUARANTEES, THAT THE INSURANCE POLICY PROVIDES COVERAGE OR OTHERWISE  
49 SETS FORTH TERMS AND CONDITIONS IN A CERTIFICATE OF INSURANCE, IF THE  
50 INSURANCE POLICY REFERENCED BY SUCH CERTIFICATE OF INSURANCE DOES NOT  
51 EXPRESSLY INCLUDE SUCH TERMS, CONDITIONS, OR LANGUAGE. THIS SUBSECTION  
52 SHALL NOT PROHIBIT ANY PERSON OR GOVERNMENTAL ENTITY FROM INCLUDING  
53 MINIMUM INSURANCE REQUIREMENTS, COVERAGE LIMITS, TERMS, OR OTHER CONDI-  
54 TIONS IN THE SOLICITATION OF BIDS AS PART OF A COMPETITIVE PROCESS, AND  
55 IT SHALL NOT PROHIBIT ANY PERSON OR GOVERNMENTAL ENTITY FROM REQUESTING,  
56 OR AN INSURER OR INSURANCE PRODUCER FROM RESPONDING TO SUCH A REQUEST

1 WITH, CLARIFICATION REGARDING THE TERMS OF THE POLICY, OR ENDORSEMENT  
2 THERETO.

3 (C) A CERTIFICATE OF INSURANCE SHALL NOT AMEND, EXTEND, OR ALTER THE  
4 COVERAGE PROVIDED BY THE INSURANCE POLICY TO WHICH THE CERTIFICATE OF  
5 INSURANCE MAKES REFERENCE. A CERTIFICATE OF INSURANCE SHALL FURTHER NOT  
6 CONFER TO ANY PERSON ANY RIGHTS BEYOND THOSE EXPRESSLY PROVIDED BY THE  
7 POLICY OF INSURANCE REFERENCED THEREIN.

8 S 503. [Applicability. The provisions of this section shall apply to  
9 all certificate holders, policyholders, insurers, insurance producers,  
10 or any other person and to certificate of insurance forms issued as  
11 evidence of insurance coverages on property, operations, or risks  
12 located in this state, regardless of where the certificate holder, poli-  
13 cyholder, insurer, or insurance producer is located.

14 S 504.] Enforcement. [(a) The superintendent shall have the power  
15 under section four hundred four of the financial services law to examine  
16 and investigate the activities of any person that the superintendent  
17 reasonably believes has been or is engaged in an act or practice prohib-  
18 ited by this article. The superintendent shall have the power to enforce  
19 the provisions of this section and impose any authorized penalty or  
20 remedy as provided under section four hundred eight of the financial  
21 services law against any person who violates this article.

22 (b) The office of the state inspector general shall have the power  
23 pursuant to section fifty-three of the executive law to investigate any  
24 governmental entity that is considered a covered agency under section  
25 fifty-one of the executive law that has been or is engaged in an act or  
26 practice prohibited by this article. If a governmental entity not  
27 considered a covered agency under section fifty-one of the executive law  
28 has been or is engaged in an act or practice prohibited by this article,  
29 that entity's inspector general, other compliance or internal investi-  
30 gative unit or other official or entity with proper authority shall have  
31 the power to investigate such entity] IF THE SUPERINTENDENT FINDS, AFTER  
32 NOTICE AND HEARING, THAT ANY PERSON, OTHER THAN A GOVERNMENTAL ENTITY,  
33 HAS WILFULLY VIOLATED THIS ARTICLE, THEN THE SUPERINTENDENT MAY ORDER  
34 THE PERSON TO PAY TO THE PEOPLE OF THIS STATE A PENALTY IN A SUM OF ONE  
35 THOUSAND DOLLARS FOR THE FIRST VIOLATION AND TWO THOUSAND DOLLARS FOR  
36 EACH SUBSEQUENT VIOLATION.

37 S [505.] 504. Rules and regulations. The superintendent may adopt  
38 rules or regulations as [he or she] THE SUPERINTENDENT considers appro-  
39 priate to carry out the provisions of this article.

40 S 2. Section 2 of chapter 552 of the laws of 2014 amending the insur-  
41 ance law relating to certificates of insurance is amended to read as  
42 follows:

43 S 2. This act shall take effect on the [ninetieth] ONE HUNDRED EIGHT-  
44 IETH day after it shall have become a law.

45 S 3. This act shall take effect immediately; provided that section one  
46 of this act shall take effect on the same date as chapter 552 of the  
47 laws of 2014, takes effect.