

3681

2015-2016 Regular Sessions

I N S E N A T E

February 13, 2015

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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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1 (c) "Insurance producer" has the meaning ascribed to it by subsection
2 (k) of section two thousand one hundred one of this chapter.

3 (d) "Insurer" means any person "doing an insurance business" [as such
4 phrase is defined in section one thousand one hundred one] WITHIN THE
5 MEANING of this chapter.

6 (e) "Person" means any individual, partnership, corporation, associ-
7 ation, or other [legal] entity, but shall not include any governmental
8 entity, [as that term is defined in this section] OR ANY AGENCY, BOARD,
9 BUREAU, COMMISSION, DEPARTMENT, DIVISION, INSTITUTION, OFFICE, OR PUBLIC
10 AUTHORITY OF A STATE, FEDERAL OR FOREIGN GOVERNMENT.

11 (f) "Governmental entity" means any public entity as defined in para-
12 graph fifty-one of subsection (a) of section one hundred seven of this
13 chapter, any state authority as defined in subdivision one of section
14 two of the public authorities law, any local authority as defined in
15 subdivision two of section two of the public authorities law, and any
16 interstate or international authority as defined in subdivision three of
17 section two of the public authorities law AND ANY INDIVIDUAL ACTING IN
18 HIS OR HER CAPACITY AS AN EMPLOYEE, OFFICER, OR ELECTED OFFICIAL OF ANY
19 SUCH GOVERNMENTAL ENTITY.

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

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

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

32 (1) The certificate is a standard certificate of insurance form
33 promulgated and authorized for use by the Association for Cooperative
34 Operations Research and Development (ACORD) or the Insurance Services
35 Office (ISO);

36 (2) The certificate is a form promulgated by the insurance company
37 that has underwritten the policy referenced in the certificate of insur-
38 ance; or

39 (3) The certificate is a form prepared, issued, or requested as
40 evidence of insurance in connection with a commercial lending trans-
41 action in which the underlying property serves as the primary collateral
42 securing the borrower's repayment of the loan, including, but not limit-
43 ed to a form promulgated by the Mortgage Bankers Association (MBA).

44 (4) The certificate is a form promulgated by a governmental entity
45 that is considered a covered agency under section fifty-one of the exec-
46 utive law, provided such form has been approved for use by the super-
47 intendent.

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

52 (c) No person or governmental entity shall request or require that a
53 certificate of insurance form contain additional terms, conditions, or
54 language of any kind not found in the insurance policy to which the
55 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.