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

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:

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

ARTICLE 5

CERTIFICATES OF INSURANCE

Section 501. Definitions.
502. Prohibitions.
503. [Applicability.
504.] Enforcement.
[505.] 504. Rules and regulations.

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

(a) "Certificate" or "certificate of insurance" means any document or instrument, OR ADDENDUM THERETO no matter how titled or described, [which is] prepared or issued by an insurer or insurance producer as evidence of [property or casualty] PROPERTY/CASUALTY insurance coverage. "Certificate" or "certificate of insurance" shall not include a policy of insurance or AN 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 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.

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

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

(d) No person or governmental entity shall 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 such person or governmental entity knows to be 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 request or require a certificate of insurance that such person or governmental entity knows contains references to a contract other than the insurance policy, or warrants 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 request or require, prepare or issue a certificate of insurance that such person or governmental entity knows: (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] IN THIS STATE:

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

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

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

(B) NO PERSON OR GOVERNMENTAL ENTITY SHALL WILFULLY REQUIRE THE INCLUSION OF TERMS, CONDITIONS OR LANGUAGE OF ANY KIND, INCLUDING WARRANTIES OR GUARANTEES, THAT THE INSURANCE POLICY PROVIDES COVERAGE OR OTHERWISE SETS FORTH TERMS AND CONDITIONS IN A CERTIFICATE OF INSURANCE, IF THE INSURANCE POLICY REFERENCED BY SUCH CERTIFICATE OF INSURANCE DOES NOT EXPRESSLY INCLUDE SUCH TERMS, CONDITIONS, OR LANGUAGE. THIS SUBSECTION SHALL NOT PROHIBIT ANY PERSON OR GOVERNMENTAL ENTITY FROM INCLUDING MINIMUM INSURANCE REQUIREMENTS, COVERAGE LIMITS, TERMS, OR OTHER CONDITIONS IN THE SOLICITATION OF BIDS AS PART OF A COMPETITIVE PROCESS, AND IT SHALL NOT PROHIBIT ANY PERSON OR GOVERNMENTAL ENTITY FROM REQUESTING, OR AN INSURER OR INSURANCE PRODUCER FROM RESPONDING TO SUCH A REQUEST

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

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

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 four 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] IF THE SUPERINTENDENT FINDS, AFTER NOTICE AND HEARING, THAT ANY PERSON, OTHER THAN A GOVERNMENTAL ENTITY, HAS WILFULLY VIOLATED THIS ARTICLE, THEN THE SUPERINTENDENT MAY ORDER THE PERSON TO PAY TO THE PEOPLE OF THIS STATE A PENALTY IN A SUM OF ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION AND TWO THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION.

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

S 2. Section 2 of chapter 552 of the laws of 2014 amending the insurance law relating to certificates of insurance is amended to read as follows:

S 2. This act shall take effect on the [ninetieth] ONE HUNDRED EIGHTIETH day after it shall have become a law.

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