

SUBJECT: Property and casualty certificates of insurance and form approval by TDI

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Eiland, Hancock, Nash, Sheets, L. Taylor, Torres, Vo, Walle

0 nays

SENATE VOTE: On final passage, March 17 — 31-0

WITNESSES: (*On House companion bill, HB 1803:*)

For — Greg Hooser, Texas Surplus Lines Association; Lee Loftis, Independent Insurance Agents of Texas; (*Registered, but did not testify:* Lee Ann Alexander, Liberty Mutual Group; Kathy Barber, NFIB; Fred Bosse, American Insurance Association; Jennifer Cawley, Texas Association of Life and Health Insurers; Justin Crawford, JPMorgan Chase; Ron Doughty, Prudential; John Fleming, Texas Mortgage Bankers; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Daniel Gonzalez, Texas Association of Realtors; John Heasley, Texas Bankers Association; Gloria Leal, Texas Alliance of Energy Producers; Lee Manross, Texas Association of Health Underwriters; John Marlow, ACE Group; J. McCartt, TIAA-CREF; Brenda Nation, American Council of Life Insurers (ACLI); Mari Ruckel, Texas Oil and Gas Association; Bruce Scott, State Farm; Steve Scurlock, Independent Bankers Association of Texas; Ben Shepperd, Permian Basin Petroleum Association; Jay Thompson, AFACT, Prudential; Joe Woods, Property Casualty Insurers Association of America)

Against — None

On — Mark Worman, Texas Department of Insurance

BACKGROUND: Title 10 of the Insurance Code governs the property and casualty insurance industry. Title 2, subtitle B, ch. 82 addresses sanctions under the discipline and enforcement subtitle.

DIGEST:

CSSB 425 would add ch. 1811 to the Insurance Code under Title 10 to govern certificates of insurance for property and casualty products. The bill would apply to certificate holders, policyholders, insurers, or agents regarding property and casualty certificates of insurance for operation or risks in Texas, regardless of the holder's location. The bill would not apply to insurance documents required as evidence of insurance in lending transactions involving security interest for real or personal property, nor would it apply to certificates for life, credit, health or accident insurance, Medicare supplement insurance, or annuity contracts.

The commissioner could adopt rules to implement the bill's provisions. The Texas Department of Insurance could collect filing fees set by the commissioner, which could not exceed \$100 and would be deposited into the department's operating account.

Prohibited acts and practices. Under the bill, a document would not qualify as a certificate of insurance if it altered, amended, or extended the coverage or terms and conditions of the insurance policy referenced on the certificate or document. A certificate or document would not be able to convey a contractual right to a certificate holder.

Insurers or agents would be able to issue certificates of insurance only if the form were filed with and approved by TDI under the bill's requirements, or if the form was a standard department-approved form. The bill would require department approval for alterations and modifications of a certificate of insurance form.

Certificate of insurance forms. Under the bill, an insurer or agent could not issue a certificate of insurance unless the form had been filed and approved by the commissioner and contained the phrase "for information purposes only." The commissioner could approve a form without the exact disclaimer phrase if the form stated that no rights and obligations aside from the policy represented were given and that the policy terms controlled over the certificate of insurance. A form would be considered approved 60 days after the filing date unless the commissioner issued an order approving or denying the form within that time.

The commissioner could extend the 60-day period by up to 10 days after notice to the insurer or agent before the period's expiration.

Disapproval or withdrawal of approval. The commissioner would be required to disapprove or withdraw approval of a form that:

- contained a provision, title, or heading that was misleading, deceptive, or violated public policy;
- violated any state law or rules adopted under the Insurance Code;
- required an agent to provide insurance coverage certification that was unavailable in the line or type of coverage referred to on the form; or
- required, directly or indirectly, the commissioner to make a determination of coverage under an insurance policy or insurance transaction.

The commissioner could not disapprove a filed form solely because it contained language different from the specific disclaimer listed in the bill.

An order by the commissioner disapproving or withdrawing approval of a form would have to detail the grounds on which the determination was made, and what changes would be needed to obtain approval. It would take effect on the date listed in the order, but could not be earlier than 30 days after the order's effective date.

A standard form issued by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office (ISO) would be approved automatically, but the commissioner still could withdraw approval of the form.

If a certificate of insurance was approved and properly executed and issued by an insurer or agent, it would serve as proof that the insurance policy was issued or that coverage had been bound.

CSSB 425 would specify that a certificate of insurance was not the equivalent of an insurance policy and did not amend, extend, or alter the coverage of the referenced insurance policy. A certificate would not confer new or additional rights to a certificate holder and could not refer to any other contract other than the underlying contract of insurance.

Under the bill, a person would have a legal right to notice of cancellation, nonrenewal, or material change only if the person was named in the policy and the policy or state law required notice.

Any certificate of insurance that violated provisions in the bill would be void and have no effect.

Enforcement and remedies. If the commissioner had reason to believe that an insurer or agent had violated or was threatening to violate the chapter created by the bill, the commissioner could:

- issue cease and desist orders;
- seek injunctions under the bill;
- request that the attorney general recover a civil penalty under the bill;
- impose sanctions on an insurer or agent under ch. 82 of the Insurance Code; or
- any combination of these actions.

The commissioner could hold a hearing to determine if a cease and desist order was necessary if the commissioner had reason to believe that an insurer or agent had violated or was threatening to violate the chapter created by the bill or had engaged in or was threatening to engage in an unfair act related to a certificate of insurance. The commissioner would be required to serve the alleged offender with a statement of charges and a notice of hearing.

A willful violator would be subject to a civil penalty of \$1,000 or less for each violation. The commissioner could request that the attorney general institute a civil suit in Travis County for injunctive relief. If the district court found the alleged offender guilty of violating or threatening to violate provisions created by the bill, the court would grant injunctive relief and issue an injunction without bond.

The commissioner would be authorized to enforce the chapter created by the bill and to investigate complaints or allegations of specific acts prohibited by the bill. If the commissioner had reason to believe that a person was performing an act in violation of provisions created by the bill, the person immediately would have to provide information to the commissioner relating to the act.

CSSB 425 would take effect September 1, 2011, and would apply only to certificates of insurance issued on or after January 1, 2012.

SUPPORTERS
SAY:

CSSB 425 would authorize TDI to regulate certificate of insurance forms, thereby providing consistency among forms issued in Texas. Because the bill has been created with the input of the insurance industry and TDI, it reflects a true compromise of industry needs and department requirements.

By creating a standard by which TDI could approve and disapprove forms, the bill would ensure that insurers and agents did not issue misleading certificates inadvertently. Customized certificates often are created by persons lacking knowledge about insurance terms of art and may contain language different from that listed in the insurance policy. Department-approved forms would prevent these issues from arising. Consumers would be protected by the bill because they no longer would receive inaccurate or ambiguous evidence of coverage. At the same time, CSSB 425 would provide flexibility to insurers and agents by allowing them to use either standard or customized forms, as long as the forms were approved by the department.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The substitute differs from the Senate-passed version of the bill by removing language regarding its application to certified self-insurers and including language specifying that fees collected would be allocated to the TDI operating account.

The House companion bill, HB 1803 by Hancock, was considered in a public hearing by the House Insurance Committee on April 5 and left pending.