

Regular Session, 2010

HOUSE BILL NO. 447

BY REPRESENTATIVE PEARSON

INSURANCE/POLICIES: Provides relative to certificates of insurance

1 AN ACT

2 To amend and reenact R.S. 22:881.1, relative to certificates of insurance; to define such
3 certificates and otherwise provide with respect to their issuance and effect; to
4 provide for the responsibilities of the commissioner of insurance relative to such
5 certificates, including approval of forms and enforcement; to provide for prohibitions
6 and penalties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:881.1 is hereby amended and reenacted to read as follows:

9 §881.1. Certificates of insurance

10 A. For the purposes of this Section:

11 ~~(1) "Certificate of insurance", as used by property and casualty insurers, shall~~
12 ~~mean any document issued by or on behalf of an insurer to a third party who has not~~
13 ~~contracted with the insurer to purchase an insurance policy and is provided for~~
14 ~~informational purposes only to advise a third party of the existence and limits of~~
15 ~~insurance coverage issued to the named insured.~~

16 (1) "Certificate" or "certificate of insurance" means any document,
17 instrument, or record, including an electronic record, no matter how titled or
18 described, which is prepared or issued as evidence of insurance coverage.

19 (2) "Certificate holder" means any person, other than a policyholder, that
20 requests, obtains, or possesses a certificate of insurance.

1 (3) "Electronic record" shall have the meaning defined in R.S. 9:2602(7).

2 (4) "Insurance" shall have the meaning defined in R.S. 22:46(9).

3 ~~(2)~~ (5) "Insurance producer" shall have the same definition as set forth in
4 R.S. 22:1542.

5 (6) "Insurer" means an insurer as defined in R.S. 22:46(10) and any other
6 person engaged in the business of making insurance contracts, including but not
7 limited to self-insurers, syndicates, risk purchasing groups, and similar risk transfer
8 entities.

9 (7) "Person" means any individual, company, insurer, organization,
10 reciprocal or inter-insurance exchange, business, partnership, corporation, limited
11 liability company, association, trust, or other legal entity, including any government
12 or governmental subdivision or agency.

13 (8) "Policyholder" means a person who has contracted with a property or
14 casualty insurer for insurance coverage.

15 (9) "Record" shall have the meaning defined in R.S. 9:2602(13).

16 (10) "Self-insurer" means any individual business or group of businesses
17 which have created a risk purchasing group, risk retention plan, syndicate, or other
18 form of self-insurance covering property or casualty risk exposures.

19 B. No property or casualty insurer or insurance producer may issue a
20 certificate of insurance or any other type of document purporting to be a certificate
21 of insurance that will affirmatively or negatively alter, amend, or extend the
22 coverage provided by the referenced insurance policy. A certificate of insurance
23 shall also not convey any contractual rights to the certificate holder.

24 C. ~~Any insurer or insurance producer acting on behalf of the insurer issuing~~
25 ~~a certificate of insurance shall be authorized to use only the standard ACORD or ISO~~
26 ~~Form "Certificate of Insurance" or other form filed with and approved by the~~
27 ~~commissioner of insurance. No person, wherever located, may prepare, issue, or~~
28 ~~request the issuance of a certificate of insurance unless the form has been filed with~~
29 ~~and approved by the commissioner of insurance. No person, wherever located, may~~

1 alter or modify an approved certificate of insurance form unless the alteration or
2 modification has been approved by the commissioner of insurance.

3 D. The commissioner of insurance shall disapprove a form filed under this
4 Section or withdraw approval of a form if the form meets any of the following
5 qualifications:

6 (1) Is unfair, misleading, or deceptive, or violates public policy.

7 (2) Fails to comply with the requirements of Subsection E of this Section.

8 (3) Violates any law, including any regulation adopted by the commissioner
9 of insurance.

10 (4) Requires certification of insurance coverages that are not reasonably
11 available.

12 E. Each certificate of insurance shall contain the following or similar
13 statement: "This certificate of insurance is issued as a matter of information only
14 and confers no rights upon the certificate holder. This certificate does not amend,
15 extend, or alter the coverage afforded by the policies referenced herein."

16 F. Standard certificate of insurance forms promulgated by the Association
17 for Cooperative Operations Research and Development (ACORD), the American
18 Association of Insurance Services (AAIS), or the Insurance Services Office (ISO)
19 are deemed approved by the commissioner of insurance and are not required to be
20 filed.

21 G. No person, wherever located, shall demand or request the issuance of a
22 certificate of insurance from an insurer, insurance producer, or policyholder that
23 contains any false or misleading information concerning the policy of insurance to
24 which the certificate makes reference.

25 H. No person, wherever located, may knowingly prepare or issue a
26 certificate of insurance that contains any false or misleading information or that
27 purports to affirmatively or negatively alter, amend, or extend the coverage provided
28 by the policy of insurance to which the certificate makes reference.

1 I. No person may prepare, issue, or request, either in addition to or in lieu of
2 a certificate of insurance, an opinion letter or other document or correspondence,
3 instrument, or record, including an electronic record, that is inconsistent with this
4 Section; however, an insurer, insurance producer, or policyholder may prepare or
5 issue an addendum to a certificate that clarifies and explains the coverages provided
6 by a policy of insurance and otherwise complies with the requirements of this
7 Section.

8 J. The provisions of this Section shall apply to all certificate holders,
9 policyholders, insurers, insurance producers, and certificate of insurance forms
10 issued as evidence of insurance coverages on property, operations, or risks located
11 in this state, regardless of where the certificate holder, policyholder, insurer, or
12 insurance producer is located.

13 K. A certificate of insurance is not a policy of insurance and does not
14 affirmatively or negatively amend, extend, or alter the coverage afforded by the
15 policy to which the certificate of insurance makes reference. A certificate of
16 insurance shall not confer to a certificate holder new or additional rights beyond
17 what the referenced policy of insurance provides.

18 L. No certificate of insurance shall contain references to legal or insurance
19 requirements contained in any contracts other than the underlying contracts of
20 insurance, including construction or service contracts. Notwithstanding any
21 requirement, term, or condition of any contract or other document with respect to
22 which a certificate of insurance may be issued or may pertain, the insurance afforded
23 by the referenced policy of insurance is subject to all the terms, exclusions, and
24 conditions of the policy itself.

25 M. A certificate holder shall only have a legal right to notice of cancellation,
26 nonrenewal, or any material change, or any similar notice concerning a policy of
27 insurance if the person is named within the policy or any endorsement as an
28 additional insured, and the policy or endorsement requires notice to be provided.
29 The terms and conditions of the notice, including the required timing of the notice,

1 are governed by the policy of insurance and cannot be altered by a certificate of
2 insurance.

3 N. Any certificate of insurance and any attached addendum prepared, issued,
4 or requested in violation of this Section shall be null and void and of no force and
5 effect and shall not be discoverable or admissible as evidence in any private civil
6 action or administrative proceeding.

7 O. Any certificate holder, policyholder, insurer, or insurance producer who
8 violates this Section shall be fined not more than one thousand dollars per violation.

9 P. The commissioner of insurance shall have the power to examine and
10 investigate the affairs of any person in order to determine whether such person has
11 been or is engaged in an act or practice prohibited by this Section. The
12 commissioner of insurance shall have the power to enforce the provisions of this
13 Section and impose any authorized penalty or remedy against any person who
14 violates this Section.

15 ~~D.Q.~~ Pursuant to the Administrative Procedure Act, the commissioner of
16 insurance may adopt reasonable rules and regulations as are necessary or proper to
17 carry out the purposes of this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Pearson

HB No. 447

Abstract: Provides relative to certificates of insurance.

Proposed law provides relative to certificates of insurance as follows:

- (1) Present law defines a certificate of insurance, as used by property and casualty insurers, as a document issued on or behalf of an insurer to a third party who has not contracted with the insurer to purchase an insurance policy, and is provided for informational purposes only to advise a third party of the existence and limits of insurance coverage issued to the named insured.

Proposed law instead defines a certificate of insurance as any document, instrument, or record, including an electronic record, no matter how titled or described, which is prepared or issued as evidence of insurance coverage.

- (2) Retains definition of "insurance producer" from present law and additionally provides for definitions of "electronic record", "insurance", "insurer", "person", "policyholder", "record", and "self-insurer".
- (3) Present law prohibits any property or casualty insurer or insurance producer from issuing a certificate of insurance or any other type of document purporting to be a certificate of insurance that will affirmatively or negatively alter, amend, or extend the coverage provided by the referenced insurance policy. Also specifies that a certificate of insurance shall not convey any contractual rights to the certificate holder.

Proposed law retains present law.

- (4) Present law provides that any insurer or insurance producer acting on behalf of the insurer issuing a certificate of insurance shall be authorized to use only the standard ACORD or ISO Form "Certificate of Insurance" or other form filed with and approved by the commissioner of insurance.

Proposed law instead prohibits any person from preparing, issuing, or requesting the issuance of a certificate of insurance unless the form has been filed with and approved by the commissioner of insurance. Also prohibits alteration or modification of an approved certificate of insurance form unless the alteration or modification has been approved by the commissioner of insurance; however, provides that standard certificate of insurance forms promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) are deemed approved by the commissioner of insurance and are not required to be filed.

Additionally requires the commissioner to disapprove a form filed or withdraw approval of a form if the form:

- (a) Is unfair, misleading, or deceptive, or violates public policy.
- (b) Fails to contain the following or similar statement: "This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the policies referenced herein."
- (c) Violates any law, including any regulation adopted by the commissioner of insurance.
- (d) Requires certification of insurance coverages that are not reasonably available.
- (5) Prohibits any person from demanding or requesting the issuance of a certificate of insurance from an insurer, insurance producer, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate makes reference. Also prohibits any person from knowingly preparing or issuing a certificate of insurance that contains any false or misleading information or that purports to affirmatively or negatively alter, amend, or extend the coverage provided by the policy of insurance to which the certificate makes reference. Further prohibits any person from preparing, issuing, or requesting, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document or correspondence, instrument, or record, including an electronic record, that is inconsistent with proposed law; however, allows an insurer, insurance producer, or policyholder to prepare or issue an addendum to a certificate that clarifies and explains the coverages provided by a policy of insurance and otherwise complies with the requirements of proposed law.

- (6) Provides that proposed law shall apply to all certificate holders, policyholders, insurers, insurance producers, and certificate of insurance forms issued as evidence of insurance coverages on property, operations, or risks located in this state, regardless of where any such entity is located.
- (7) Provides that a certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference. Specifies that a certificate of insurance shall not confer to a certificate holder new or additional rights beyond what the referenced policy of insurance provides.
- (8) Provides that no certificate of insurance shall contain references to legal or insurance requirements contained in any contracts other than the underlying contracts of insurance, including construction or service contracts. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which a certificate of insurance may be issued or may pertain, provides that the insurance afforded by the referenced policy of insurance is subject to all the terms, exclusions, and conditions of the policy itself.
- (9) Provides that a certificate holder shall only have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance if the person is named within the policy or any endorsement as an additional insured, and the policy or endorsement requires notice to be provided. Specifies that the terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance and cannot be altered by a certificate of insurance.
- (10) Provides that any certificate of insurance and any attached addendum prepared, issued, or requested in violation of proposed law shall be null and void and of no force and effect and shall not be discoverable or admissible as evidence in any private civil action or administrative proceeding.
- (11) Imposes a fine of not more than \$1,000 per violation on any certificate holder, policyholder, insurer, or insurance producer who violates proposed law.
- (12) Authorizes the commissioner to examine and investigate the affairs of any person in order to determine whether such person has been or is engaged in an act or practice prohibited by proposed law. Further authorizes the commissioner to enforce the provisions of proposed law and to impose any authorized penalty or remedy against any person who violates proposed law.
- (13) Present law authorizes the commissioner, pursuant to the Administrative Procedure Act, to adopt reasonable and necessary rules to carry out the purposes of proposed law.

Proposed law retains present law.

(Amends R.S. 22:881.1)