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Senate Bill 715 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Insurance
House Committee: Insurance

PUBLIC ACT 271 of 2014

Date Completed: 7-7-14

RATIONALE

The Insurance Code prohibits insurance producers from adding to a certificate of insurance terms, conditions, or provisions that would modify or expand the terms of the policy without the authorization of the insurer. Some insurance producers claim that certain public and private entities require an insured to supply evidence of insurance on forms that serve to modify the terms of the insurance policy. This, they argue, puts them in the position of having to turn down business in order to comply with the law, or risk disciplinary measures for issuing an improper certificate. While the Code prescribes penalties for insurance producers who violate the prohibition, it does not do so for entities that induce or pressure an insurance producer to commit a violation. To address this issue, it has been suggested that it should be illegal for a person to require the issuance of a certificate of insurance that contains any false or misleading information.

CONTENT

The bill adds Chapter 22A to the Insurance Code to do the following regarding a certificate of insurance for property or casualty coverage:

- Prohibit a person from issuing a certificate of insurance that alters the coverage provided by an insurance policy referred to in the certificate, or contains false or misleading information concerning a policy, or requiring the issuance of a certificate with false or misleading information regarding a policy.**
- Provide that a person has a right to notice of cancellation only under the terms of an insurance policy.**
- Prescribe administrative and civil remedies for violations of Chapter 22A.**

The bill defines "certificate of insurance" as "a document, regardless of how titled or described, that is prepared by an insurer or insurance producer that is a statement or summary of an insured's property or casualty insurance coverage". The term does not include an insurance policy, insurance binder, or policy endorsement.

The bill prohibits a person from: a) issuing or delivering a certificate of insurance that alters, amends, or extends the coverage provided by an insurance policy referred to in the certificate, b) preparing or issuing a certificate that contains false or misleading information concerning an insurance policy, or c) demanding or requiring the issuance of a certificate from an insurer, insurance producer, or policyholder that contains false or misleading information concerning an insurance policy referred to in the certificate.

The bill provides that a certificate does not represent an insurer's obligation to give notice of cancellation or renewal to a person, except as provided in an insurance policy. A person is entitled to notice of cancellation, nonrenewal, and any similar notice only if the person has notice rights under the terms of a policy or an endorsement to an insurance policy. The terms and

conditions of notice are governed by the policy or endorsement and may not be altered by the certificate of insurance.

If the Director of the Department of Insurance and Financial Services finds that a person violated Chapter 22A, after an opportunity for a hearing under the Administrative Procedures Act, the Director must put the findings and decision in writing and serve the person charged with the violation with a copy of the findings and a cease-and-desist order. The Director also may order the payment of a civil fine of up to \$500 per violation. If the person knew or should have known that he or she was in violation of Chapter 22A, the maximum fine is \$2,500 per violation. An order may not require the payment of civil fines exceeding \$25,000. Any fine collected must be turned over to the State Treasurer and credited to the General Fund. In addition, the Director may apply to the Circuit Court of Ingham County for an order enjoining a violation of Chapter 22A.

The bill took effect on July 2, 2014.

MCL 500.2270-500.2277

BACKGROUND

A "certificate of insurance", generally, is a "document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers".¹ These documents are typically provided to a third-party as evidence of an insurance policy maintained by an insured in instances in which the third party and the insured are involved in a contractual relationship. In 2008, the Office of Financial and Insurance Regulation - now Department of Insurance and Financial Services (DIFS) - specified in a bulletin that an insurance producer violates the Insurance Code if the producer provides a certificate or other evidence of insurance that revises or misrepresents the actual coverage of the policy.² An insurance producer that issues such a certificate is subject to administrative fines and license suspension or revocation.³

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Michigan Association of Insurance Agents (MAIA), certificate of insurance forms used by the Michigan Department of Transportation (MDOT) are examples of impermissible revisions to policy language.⁴ Form 2020 is a certificate of insurance form used when a contractor contracts with MDOT to do construction work.⁵ This form requires that notice of cancellation be sent to MDOT and other entities. The form also adds other entities as additional insureds without regard to the policy language. According to MAIA, under the terms of most insurance policies, insureds are the only entities with notification rights for either intentional or unintentional cancellation of policies; however, these forms effectively attempt to alter the terms of the policy to provide notification rights that are not specified in the policy. Other municipal and private entities use similar forms or pressure insurance producers to issue certificates that reflect terms different from the underlying insurance policy.⁶

The bill will prevent entities, both private and public, from pressuring insurance producers into violating the law in the manner described above. If this were an issue with public entities (e.g., MDOT) only, it would be necessary simply to go to these entities and encourage them to change

¹ *Black's Law Dictionary*, 7th edition.

² Bulletin No. 2008-INS, "Property and Casualty Certificates of Insurance", August 15, 2008. Available at: https://www.michigan.gov/dleg/2008-11-INS_245685_7.pdf?20140321114316.

³ Bulletin No. 2008-INS. The statutory bases for these disciplinary measures are MCL 500.1239 and 500.2005(a).

⁴ Scott Hummel and Richard Pease, Testimony before the Senate Committee on Insurance, 3-4-14.

⁵ *Id.*

⁶ *Id.*

to their policies, as MDOT has already begun to do. However, other entities have adopted the tactic of pressuring insurance producers to alter the insurance certificates. An insurance producer should not have to choose between obeying the law and potentially losing a client to a less scrupulous insurance producer, or violating the law but appeasing a customer. The bill codifies the current DIFS Bulletin on the matter and removes any related ambiguities in the law. Since 2011, 13 states have adopted similar legislation.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill will result in an indeterminate increase in revenue at the State level, and an indeterminate increase in court caseloads at the local government level.

State: Fines for violations of Chapter 22A will be directed to the State General Fund. As it is unknown how many violations will occur, any resulting increase in the General Fund is indeterminate.

The Department of Insurance and Financial Services will incur additional administrative expenses regarding charging individuals with violations of Chapter 22A, and holding hearings for alleged violations. According to DIFS, any increases in administrative expenses will be covered by current revenue sources.

Local: The bill will increase caseloads at the circuit court level. The bill authorizes the Director of DIFS to apply to the Ingham County 30th Circuit Court for an injunction relating to violations of Chapter 22A. Also, challenges to administrative hearing decisions or orders may be appealed to the circuit court of the county in which the petitioner resides, or to the Ingham County 30th Circuit Court. Since it is unknown how many violations and subsequent challenges will occur, and how many injunctions the Director will pursue, the potential increase in cases is indeterminate.

Fiscal Analyst: Glenn Steffens

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.