

SUBCHAPTER M. FILING REQUIREMENTS
DIVISION 11. FILINGS MADE EASY – CERTIFICATES OF PROPERTY AND
CASUALTY INSURANCE
28 TAC §§5.9370 – 5.9376

1. INTRODUCTION. The commissioner of insurance adopts new Subchapter M, Division 11, §§5.9370 – 5.9376, concerning certificates of property and casualty insurance. Sections 5.9370, 5.9372, and 5.9374 are adopted with changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9593). Sections 5.9371, 5.9373, 5.9375, and 5.9376 are adopted without changes and will not be republished.

2. REASONED JUSTIFICATION. Senate Bill 425, 82nd Legislature, Regular Session, 2011, added Chapter 1811 to the Insurance Code, relating to Certificates of Property and Casualty Insurance and approval of property and casualty certificate of insurance forms by TDI. Chapter 1811 applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located. Under §1811.052, certificate of insurance forms for risks located in Texas must be filed with and approved by TDI before being executed, issued, or required to be issued. Moreover, §1811.101 prohibits an insurer or agent from delivering or issuing for delivery in Texas a certificate of insurance unless the certificate's form has been filed with and approved by the commissioner.

The new sections are necessary to implement Insurance Code Chapter 1811. Since SB 425 took effect on September 1, 2011, TDI has received a number of inquiries regarding filing requirements, use, and permissible content of certificates of insurance. The sections address those issues to improve the efficiency, effectiveness, and transparency of TDI's filing and approval process for certificate of insurance form filings, and to provide clear guidance to persons responsible for completing the approved forms.

In response to a comment and to comply with United States Code Title 15, Section 8202(c), TDI has added subsection (e) to §5.9370 to clarify that the adopted sections do not apply to a certificate or evidence form pertaining to a nonadmitted insurance policy sold to, solicited by, or negotiated with an insured whose home state is not Texas. Subsection (e) also defines "home state" as in Insurance Code §226.051.

3. HOW THE SECTIONS WILL FUNCTION. Section 5.9370 addresses the purpose and scope of the rules. Section 5.9371 supplements and clarifies the definitions in Chapter 1811. Sections 5.9372 – 5.9374 provide specific requirements for the preparation and submission of certificate of insurance form filings, including requirements for the transmittal information and the TDI procedure for handling incomplete filings. Section 5.9375 addresses the use of certificate of insurance forms. Section 5.9376 explains restrictions that apply to the content of certificates of insurance.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter recommended revising the proposed rules to add an exclusion to §5.9370 that reflects the federal preemption in 15 U.S.C. §8202(c) with regard to a surplus lines policy placed with an insured whose home state is another state. The commenter also recommended that TDI define “home state” as in Insurance Code §226.051.

Agency Response: TDI has added subsection (e) to §5.9370 to clarify that the adopted sections do not apply to a certificate or evidence form pertaining to a nonadmitted insurance policy sold to, solicited by, or negotiated with an insured whose home state is not Texas. TDI has also defined “home state” in subsection (e) as in Insurance Code §226.051.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: Winstead, on behalf of the Surplus Lines Stamping Office of Texas.

6. STATUTORY AUTHORITY. The commissioner adopts new §§5.9370 – 5.9376 pursuant to Insurance Code §§1811.003, 1811.052, 1811.101, 1811.102, 1811.103, and 36.001. Section 1811.003 allows the commissioner to adopt rules as necessary or proper to accomplish the purposes of Chapter 1811. Section 1811.052 requires TDI approval for certificates of insurance for risks located in Texas prior to use. Sections 1811.101 and 1811.102 provide filing, approval, and disapproval requirements for

certificates of insurance. Section 1811.103 mandates that certain standard certificate of insurance forms are deemed approved upon filing. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

7. TEXT.

DIVISION 11. FILINGS MADE EASY – CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

§5.9370. Purpose and Scope.

(a) This division specifies the filing requirements for certificates of property and casualty insurance submitted pursuant to Chapter 1811 of the Insurance Code. It also consolidates and explains the restrictions that apply to the content of certificates of insurance.

(b) Nothing in this division prohibits a certificate holder from requesting a copy of the subject policy or endorsements.

(c) Nothing in this division applies to certificates or evidence forms exempted from the filing requirements pursuant to Insurance Code §1811.002(b), including:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving a mortgage, lien, deed of trust, or any other security interest in real or personal property as security for a loan;

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(2) a certificate issued under a group or individual policy for life insurance, credit insurance, accident and health insurance, long-term care benefit insurance, or Medicare supplement insurance or an annuity contract; or

(3) standard proof of motor vehicle liability insurance.

(d) Nothing in this division applies to negotiable or transferable certificates or evidence forms pertaining to marine insurance.

(e) Nothing in this division applies to a certificate or evidence form pertaining to a nonadmitted insurance policy sold to, solicited by, or negotiated with an insured whose home state is not Texas. In this subsection, "home state" has the same definition as in Insurance Code §226.051.

§5.9371. Definitions.

(a) Words and terms not defined in this division have the same meaning as in Chapter 1811 of the Insurance Code.

(b) Unless the context indicates otherwise, this division uses the following definitions:

(1) Certificate of insurance—A document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form, or any document that describes insurance

coverage that is merely promised or expected to exist in the future, whether titled as an affidavit, insurance verification form, or otherwise.

(2) Certificate holder—A person, other than a policyholder, who is designated on a certificate of insurance as a certificate holder or to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) Company—The name of the entity filing the certificate of insurance form. If a third party is filing the certificate of insurance form, the company name is the name of the entity for which the third party is filing the certificate of insurance form, not the name of the third party filer.

(4) Commissioner—The commissioner of insurance.

(5) TDI—The Texas Department of Insurance.

(6) Insurance Code—The Texas Insurance Code.

(7) FEIN—Federal Employer Identification Number.

(8) NAIC—The National Association of Insurance Commissioners.

(9) SERFF—The NAIC System for Electronic Rate and Form Filing.

§5.9372. Preparation and Submission of Certificate of Insurance Form Filings.

(a) Approval required. A certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located, must be on a form that has been filed and approved prior to use.

(b) Filing content. All filings for new or amended certificate of insurance forms submitted pursuant to Insurance Code Chapter 1811 must comply with the filing requirements set forth in this division, any other applicable rules the commissioner has adopted, and any applicable commissioner's orders.

(1) All filings must contain transmittal information as required by §5.9373 of this title (relating to Certificate of Insurance Form Filing Transmittal Information).

(2) All filings must contain a copy of the subject certificate of insurance form. For identification purposes, the certificate of insurance must contain a form number and edition date.

(c) Combined filings. Do not combine a certificate of insurance form filing with any other filing.

(d) Filing submission.

(1) TDI will accept a filing required under this division by mail. Send filings to the Texas Department of Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

(2) TDI will accept a filing required under this division if it is hand-delivered. Bring filings to the Texas Department of Insurance, Customer Service Center, William P. Hobby Jr. State Office Building, 333 Guadalupe St., Tower 1, Room 103, Austin, Texas 78701.

(3) TDI will accept a filing required under this division that is submitted electronically, whether by email to PCFilingsIntake@tdi.texas.gov or through SERFF.

(4) TDI will not collect a filing fee for a certificate of insurance filing.

(e) Public inspection of filing.

(1) A certificate of insurance form and any supporting information filed with TDI under this division is open to public inspection as of the date of the filing.

(2) To the extent that a filing includes company contact information, the company affirmatively consents to the release and disclosure of its company contact information, including any email addresses.

§5.9373. Certificate of Insurance Form Filing Transmittal Information.

(a) Required information. The filing transmittal information must be typed and must contain, at a minimum, the following:

(1) company;

(2) NAIC number if the filing is submitted by an insurer;

(3) FEIN if the filing is submitted by an entity other than an insurer or agent; and

(4) contact person, including name, telephone number, mailing address, fax number, and email address (if available).

(b) Transmittal information format.

(1) The Certificate of Insurance Form Filing Transmittal Form is available on TDI's website at www.tdi.texas.gov or by request to the Texas Department of

Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

(2) Filers may submit transmittal information in a format other than the form provided by TDI if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (a) of this section.

(c) SERFF filings. Persons filing through SERFF must follow existing procedures for SERFF filings.

§5.9374. Incomplete Filings.

(a) A filing is incomplete if the filing does not comply with all of the filing requirements described in this division.

(b) TDI will return an incomplete filing to the filer with a letter or electronic notification indicating the reasons for the return.

(c) The 60-day period in Insurance Code §1811.101(c) does not commence until TDI receives a complete filing.

§5.9375. Use of Certificate of Insurance Forms.

(a) A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American

Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with TDI.

(b) An authorized user may use a company's approved certificate of insurance form or a standard certificate of insurance form as evidence of property and casualty insurance coverage without making a separate filing.

(c) An authorized user is:

(1) any person authorized by the company or the company's designee to use the company's approved certificate of insurance form; or

(2) any person authorized by ACORD, AAIS, or ISO to use the appropriate standard certificate of insurance form.

§5.9376. Restrictions on the Content of Certificates of Insurance.

(a) Required language. A certificate of insurance must contain the phrase "for information purposes only" or similar language, or state that:

(1) the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and

(2) the terms of the policy control over the terms of the certificate of insurance.

(b) Specific limitations.

(1) A certificate of insurance may not amend, extend, or alter the coverage afforded by the referenced insurance policy.

(2) A certificate of insurance may not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides.

(3) A certificate of insurance may not alter or modify a certificate of insurance form approved by TDI unless TDI approves the alteration or modification.

(4) A certificate of insurance may not contain false or misleading information concerning the referenced insurance policy.

(A) Requests for information on the certificate of insurance form must be specific, clear, and reasonable.

(B) Any explanatory information included in a completed certificate of insurance is limited to language in the referenced policy and any executed endorsements.

(5) A certificate of insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

(A) A certificate of insurance may refer to the language in the underlying contract of insurance.

(B) A certificate of insurance may not refer to, describe, explain, or define obligations under a contract other than the underlying contract of insurance.

(6) A certificate of insurance may not alter the terms and conditions of a right to notice of cancellation, nonrenewal, or material change, or any similar notice concerning a policy of insurance required by the insurance policy or Texas law.

(A) A certificate of insurance may not create a new or additional duty to notify.

(B) Any statement on a certificate of insurance regarding an existing duty to notify is limited to language in the referenced policy and any executed endorsements.

(c) Disapproval. The commissioner will disapprove a filed certificate of insurance form, or withdraw approval of an approved certificate of insurance form if the form:

(1) contains a provision or has a title or heading that is misleading or deceptive or violates public policy;

(2) violates any state law, including an administrative rule;

(3) requires an agent to certify insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

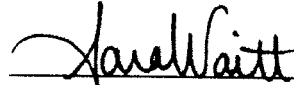
8. CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

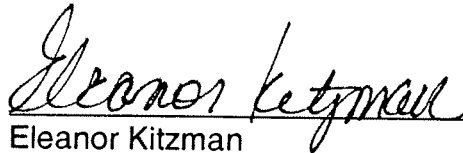
Adopted Sections
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Issued in Austin, Texas, on February 21, 2013.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts new Division 11, §§5.9370 – 5.9376.



Eleanor Kitzman
Commissioner of Insurance

Commissioner's Order No. **2307**
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