



June 21, 2007

STATEMENT RE: S-2393

“An Act providing for the licensing of heating, ventilating and air conditioning contractors, amending P.L. 1971, c.60, P.L. 1974, c.46 and P.L. 1978, c.73 and supplementing Title 45 of the Revised Statutes.

TO: Senate Labor Committee

BY: Leon Zimmerman, Legislative Representative
Professional Insurance Agents of New Jersey

The Professional Insurance Agents of New Jersey, Inc. (PIANJ) is a trade association which represents more than 7,000 professional independent insurance agents and their employees doing business in communities throughout New Jersey.

PIANJ does not oppose S-2393, but is concerned because one provision of the bill requiring a certificate of insurance will be impossible for insurance producers to provide without violating the insurance law.

Section 18(a) of the bill requires HVAC contractors to file with the Board of Examiners a certificate of insurance evidencing a policy of general liability (GL) insurance policy in a minimum amount of \$300,000.

Section 18(c) states that every certificate of insurance required to be filed with the Board shall provide that cancellation of the insurance shall not be effective unless and until at least 10 days' notice of intention to cancel has been received in writing by the Board of Examiners.

Section 18(c) will require insurance producers and companies to issue certificates of insurance that will misrepresent the terms of the GL policy. No GL policy currently in use by any insurance company contains a policy provision for notice of cancellation or nonrenewal to be given to the Board of Examiners. Nor would an insurance company likely amend its policy to provide such notice, absent a statutory requirement.

Certificates of insurance cannot amend the terms of an insurance policy. They are used only as proof that a policy of insurance is in effect and to summarize essential terms, conditions and duration of the policy. Certificates cannot be used to amend, expand or alter a policy's terms.

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If an insurance producer were to provide a certificate of insurance that stated that cancellation or nonrenewal would not be effective unless notice were provided to the Board of Examiners, the producer would be amending the terms of the policy in violation of state insurance law.

The Department of Banking and Insurance issued Bulletin 98-05 to address the issuance of certificates. The Bulletin was issued because certain public and commercial organizations were requesting contractors to produce certificates of insurance that evidenced conditions of coverage that were inconsistent with the underlying insurance policy. The Department reminded insurance companies that N.J.S.A. 17:22A-17a(7) prohibits material misrepresentation of the terms and conditions of insurance contracts or policies to any person. The Department warned that providing a certificate of insurance that materially misrepresents policy terms or conditions violates the law and subjects a producer to penalties that include suspension or revocation of the producer's license and could create civil liability.

Consequently, section 18(c) of S-2393 will place insurance producers in an untenable position. Their HVAC contractor customers, who need the certificate to be able to renew their license, will be asking their producers for a certificate that includes the provision for notice of cancellation to the Board of Examiners. Producers will be unable to provide these certificates without violating the law.

The problem is easily remedied by removing the requirement that the certificate of insurance provide for 10 days' notice of cancellation or nonrenewal to the Board and replacing it with one requiring an HVAC contractor whose policy is cancelled or nonrenewed to submit to the Board a certificate of insurance for the new or replacement GL policy before the existing policy expires. This replacement provision would fulfill the original intent of Section 18(c) by ensuring that HVAC contractors maintain the required insurance coverage.

PIANJ suggests the following replacement wording for section 18(c):

“Every licensed HVAC contractor whose general liability policy is cancelled or nonrenewed, shall submit to the board a copy of the certificate of general liability insurance for a new or replacement policy which meets the requirements of subsection a. of this section before the former policy is no longer effective. “

PIANJ urges the committee to amend the bill as suggested.