



**Report on the Impact of Requiring a Certificate
of Insurance to Be Filed with and Approved by
the Insurance Commissioner before Use**

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Introduction

During the 2011 Legislative Session of the Maryland General Assembly, the General Assembly considered legislation regarding certificates of insurance¹ and certificate of insurance forms. As introduced, House Bill 982 and Senate Bill 656 would have, among other things, prohibited a person from issuing or requiring the preparation or issuance of a certificate of insurance unless the certificate of insurance form had been filed with and approved by the Maryland Insurance Commissioner (Commissioner). The bills also would have provided that standard certificate of insurance forms adopted by the Association for Cooperative Operations Research and Development² (ACORD) or the Insurance Services Office³ (ISO) that complied with certain prescribed requirements would have been deemed approved by the Commissioner.

As enacted, House Bill 982 and Senate Bill 656 (Chapters 515 and 514, Acts of 2011) prohibit a person from preparing or issuing or requiring an insurer, insurance producer, or policyholder to prepare, issue, or provide a certificate of insurance that the person knows is false or misleading in any way or that purports to change the coverage of the policy referenced in the certificate. Copies of Chapters 515 and 514 are found in **Exhibit 1**. Chapters 515 and 514 also prohibit a person from preparing, issuing, or requiring, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with the Acts' provisions. In addition, the Maryland Insurance Administration (MIA) is required to study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved

¹ A certificate of insurance is a document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers. Black's Law Dictionary 240 (8th ed. 2004).

² The Association for Cooperative Operations Research and Development is a standards development organization primarily serving the insurance and related financial services industries. ACORD develops standard forms for use by the industries it serves.

³ The Insurance Services Office provides advisory services and information to the property and casualty market and other clients. ISO develops and publishes policy language that many insurance companies use as the basis for their products.

by the Commissioner before use. The study is to include a review of states having similar requirements and the Commissioner is required to include representatives of all interested parties in the conduct of the study.

Background

A certificate of insurance is most commonly provided for informational purposes by or on behalf of an insurer to a third party advising of the existence and amount of property and casualty insurance issued to a named insured. The certificate of insurance usually is issued due to a contractual obligation between the named insured and the third party requiring that the named insured meet certain insurance requirements. These contractual obligations are commonly found in service contracts and construction contracts with local and state governmental entities, large contractors, and major corporations. A certificate of insurance does not provide or extend coverage for a given risk; rather, the certificate of insurance verifies the insurance coverages of the named insured. The primary means to accomplish this verification is by requiring the named insured to provide a certificate of insurance that includes information about the type of insurance policy issued, the effective date of the policy, and the policy's coverage limits. Information regarding policy endorsements also is included on a certificate of insurance.

Section 11-206(a) of the Insurance Article requires each insurer to file with the Commissioner policy forms and endorsements, and all modifications thereof, that the insurer proposes to use. Any form filed may not take effect until 30 working days after it is filed with the Commissioner. If the Commissioner needs additional time for consideration of the filing, the

Commissioner may extend the waiting period for an additional 30 days by written notice to the filer. A filing is deemed approved unless disapproved by the Commissioner during the waiting period or any extension of the waiting period. Certificates of insurance are not among the forms currently filed with the MIA.

In 2008, the MIA received reports that some insurers and insurance producers were being asked to provide certificate of insurance forms which included language that was inconsistent with the coverage provided by the underlying insurance policy. The MIA issued Bulletin 08-34 (**Exhibit 2**) to clarify the importance of a certificate of insurance clearly and accurately reflecting the coverage being provided. Bulletin 08-34 further provides:

No person, including a licensed insurer or licensed insurance producer, may issue a Certificate of Insurance that either affirmatively or negatively amends, extends or alters, or otherwise modifies the coverage provided by the underlying insurance policy. It is a violation of the Insurance Article for a producer to alter standardized Certificate of Insurance forms to accommodate requests for 'hold harmless' agreements or other types of clauses that seek to modify the terms or conditions of the underlying policy. No insurance producer should issue a Certificate of Insurance that does not accurately reflect the terms and conditions of the underlying insurance policy.

Since Bulletin 08-34 was issued, the MIA has received a total of four complaints related to certificates of insurance alleged to have been amended or altered in a manner that is inconsistent with the underlying insurance policy. The MIA's Compliance and Enforcement Unit also has conducted several investigations related to certificates of insurance on contractor performance bonds, some resulting in market regulatory actions taken against producers.

Review of States Requiring Prior Approval of Certificates of Insurance

As of October 2011, 12 states require, by statute, regulation, or bulletin, that certificates of insurance be filed with the state's insurance commissioner for approval prior to use. Those states are: Alabama, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, and Texas.⁴ Additional details regarding the requirements in each of the 12 states are provided below.

Alabama

Alabama Department of Insurance Administrative Code Chapter 482-1-062 provides that an insurer not using the standard ACORD or ISO Form "Certificate of Insurance" shall file the form of certificate or memorandum of insurance which will be used by the insurer. Additional guidance issued by the Alabama Department of Insurance clarifies that an insurer or producer acting for an insurer may not use a form other than the forms published by ACORD and ISO unless that form has been previously submitted to and approved by the Insurance Commissioner.

Georgia

Section 33-24-19.1(b) of the Official Code of Georgia provides that a person may not prepare, issue, or request the issuance of a certificate of insurance unless the form has been filed with and approved by the Commissioner of Insurance. Subsection (e) of Section 33-24-19.1 further provides that certificate of insurance forms promulgated by ACORD or ISO are deemed approved by the Commissioner of Insurance and are not required to be filed if the forms otherwise comply with the law.

⁴ Of the remaining states that do not require the approval of a certificate of insurance prior to its use, all have, in recent years, issued guidance regarding the appropriate use of a certificate of insurance, similar to Bulletin 08-34.

Iowa

Iowa Insurance Division Bulletin 10-04 provides that the Division is authorized by law to examine and approve the use of all policy-related forms issued by an insurance company doing business in Iowa. The Bulletin also provides that as of September 10, 2010, the law has been interpreted by the Division to require the approval of all certificate of insurance forms before such forms may be used. Further, the Bulletin provides that standard certificate of insurance forms file by ACORD or ISO and approved by the Division are not required to be filed again by an insurance company.

Kansas

Section 40-955(b) of the Kansas Statutes Annotated provides that certificate of insurance forms must be filed with the Kansas Commissioner of Insurance and approved prior to use. Kansas law further provides that an industry standard-setting organization may be authorized to file certificate of insurance forms on behalf of authorized insurers.

Kentucky

Chapter 14 of Title 806 of the Kentucky Administrative Regulations provides that prior to its use, each insurer shall file with the Commissioner of Insurance the form of certificate or memorandum of insurance which will be issued by such company. Advisory Opinion 2011-02 issued by the Department of Insurance clarifies that it is contrary to law for an agent or insurer to issue, or permit to be issued, a certificate of insurance in a form not previously filed by the insurer and approved by the Department of Insurance. Certificate of insurance forms printed by ACORD and ISO have been filed with and approved by the Kentucky Department of Insurance. Insurers may file to adopt the forms by reference.

Louisiana

Section 22:890 of the Louisiana Revised Statutes provides that no person may issue or request the issuance of a certificate of insurance for risks located in Louisiana unless the form has been filed with and approved by the Commissioner of Insurance. Standard certificate of insurance forms promulgated by ACORD, ISO, and the American Association of Insurance Services must be filed but are deemed approved provided that the forms comply with other provisions of the law.

Mississippi

Mississippi Department of Insurance Regulation 2009-1 provides that each insurer or producer not using the standard ACORD or ISO Form "Certificate of Insurance," as filed with and approved by the Commissioner, shall file with the Commissioner for approval prior to use the form of the certificate of insurance or binder which will be used by such insurer or producer.

New Mexico

Division of Insurance of New Mexico Bulletin 2011-001 clarifies that a licensee or employee of a licensee cannot issue a certificate of insurance form unless the form is filed and approved by the Division. The Division's Bulletin further provides that prior to its use, each insurer not using the standard ACORD or ISO "Certificate of Insurance" forms shall file with the Superintendent of Insurance the form of certificate or memorandum of insurance which will be used by such insurer.

North Carolina

Section 58-3-150 of the General Statutes of North Carolina provides that it is unlawful for any insurance company licensed and admitted to do business in the state to issue, sell, or

dispose of any policy, contract, or certificate until the forms of the same have been submitted to and approved by the Commissioner of Insurance. Certain ACORD forms have been approved for use in North Carolina.

North Dakota

Section 26.1-30-19 of the North Dakota Century Code requires insurance companies to file, on a prior approval basis, the insurance policy, certificate, contract, or agreement they plan to use.

Oklahoma

Oklahoma Insurance Department Bulletin No. PC 2008-01 clarifies that Oklahoma law defines “policy” to mean “a contract of or agreement for effecting insurance, or the certificate thereof” and that all insurers are required to file policies with the Department for review and approval before the policy is used in Oklahoma.

Texas

Section 1811 of the Texas Insurance Code prohibits an insurer or an agent from issuing a certificate of insurance that has not been filed with and approved by the Texas Department of Insurance unless the form is a standard form deemed approved by the Department.

Impact of Requiring a Certificate of Insurance to Be Filed with and Approved by the Commissioner before Use

Impact on Insurance Industry

For this study, the Independent Insurance Agents of Maryland, Inc. submitted written comments regarding the impact of requiring that a certificate of insurance be filed with and

approved by the Commissioner before use (**Exhibit 3**). The producer community indicated that it has experienced problems arising when a person requesting a certificate attempts to alter the purpose, effect, and status of the certificate. Examples include a person (1) requesting the issuance of a certificate of insurance that purports to expand the insurance coverage beyond the terms of the underlying policy; (2) demanding the inclusion of unreasonable terms and conditions in a certificate of insurance; and (3) otherwise attempting to compel an insurance producer to issue a certificate of insurance that is deceptive and misleading. In written comments, producer community representatives stated that requiring a certificate of insurance to be approved prior to its use would prevent a person from altering, amending, or requiring another person to alter or amend a certificate of insurance.

The League of Life and Health Insurers (League) provided oral comments regarding the provision of certificates of insurance in nonrecourse lending.⁵ The League commented that life insurers often require certificates of insurance in their nonrecourse lending business units and support the notion that certificates of insurance should be a true representation of the underlying insurance policy.

The Maryland Insurance Alliance provided oral comments that support allowing ACORD and ISO certificate of insurance forms to be deemed approved by the MIA.

Impact on Governmental and Business Entities

It is not uncommon for local and state governmental entities, large contractors, and major corporations to require the use of certificates of insurance specifically tailored to the services

⁵ A nonrecourse loan is a secured loan that allows the lender to attach only the collateral, not the borrower's personal assets, if the loan is not repaid. Black's Law Dictionary 955 (8th ed. 2004).

furnished under contracts with third parties and the risks associated with those services.⁶ To the extent that (1) these entities develop their own certificate of insurance forms, in lieu of using standard certificate of insurance forms developed by ISO or ACORD; and (2) a certificate of insurance is required prior to commencing work on a project, work on the project may be delayed if the certificate of insurance has not already been approved by the MIA. Further, current industry practice is to provide certificates of insurance at no cost to the named insured. As there are fees associated with filing forms with the MIA, requiring the certificate of insurance to be approved prior to its use may result in passing on the filing fee costs to contractors providing services for which a certificate of insurance is required.⁷

Impact on the MIA

Given the number of industries and governmental entities that may require the submission of a certificate of insurance as part of a contractual obligation on a service or construction contract, the MIA sought to determine whether it would require additional staff or other resources in order to timely review and approve such additional filings. Specifically, the MIA surveyed the departments of insurance of Georgia, Kansas, North Carolina, and North Dakota to determine the fiscal impact of the prior approval requirements in those states for certificate of insurance forms. The insurance departments surveyed indicated that the fiscal impact was negligible, as most insurers in those states are using standard ACORD or ISO forms.

⁶ See, e.g., the Maryland Procurement Technical Assistance Program's website at www.mdptap.org (providing links to millions of dollars in procurement opportunities for small businesses at the local level, which include information regarding the insurance and certificate of insurance requirements of the respective procuring authority).

⁷ The form filing fee generally is \$125 per form.

Conclusion

The producer association providing comments for this study indicated that requiring a certificate of insurance to be approved prior to its use would, in its view, prevent a person from altering, amending, or requiring another person to alter or amend a certificate of insurance in a manner inconsistent with the underlying insurance policy. Insurer community representatives supported the notion that certificates of insurance should be consistent with the terms of the underlying policy. Requiring a certificate of insurance to be filed with and approved by the Commissioner prior to its use may increase, at least to some extent, the cost of and the time required to obtain a certificate of insurance. Any such impact could be at least partially mitigated to the extent that entities requiring certificates of insurance use standard ISO or ACORD forms. If the experience in certain other states requiring the prior approval of certificates of insurance holds true in Maryland, the fiscal impact on the MIA of a prior approval requirement for certificate of insurance forms may be minimal. However, it is difficult to estimate how many new filings will be triggered by such a requirement in Maryland.

Exhibit List

Exhibit 1 – Chapters 515 and 514, Acts of 2011

Exhibit 2 – Maryland Insurance Administration Bulletin 08-34

Exhibit 3 – Written comments provided by The Independent Insurance Agents of Maryland, Inc.

Chapter 515

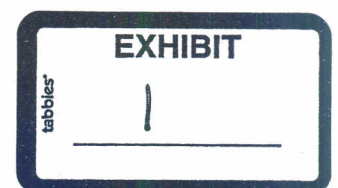
(House Bill 982)

AN ACT concerning

Property and Casualty Insurance – Certificates of Insurance and Certificate of Insurance Forms

FOR the purpose of ~~prohibiting a person from preparing or issuing or requiring the preparation or issuance of a certificate of insurance unless the certificate of insurance form has been filed with and approved by the Maryland Insurance Commissioner; providing a certain exception; prohibiting a person from altering or modifying a certain certificate of insurance form; requiring the Commissioner to disapprove a certificate of insurance form or withdraw approval of a certificate of insurance form under certain circumstances; requiring a certificate of insurance to contain certain language; prohibiting a certificate of insurance from containing a reference to a certain contract; prohibiting a person from requiring an insurer or insurance producer to prepare or issue, or a policyholder to provide, a certificate of insurance that contains false or misleading information relating to the policy of insurance referenced in the certificate; prohibiting a person from preparing or issuing a certificate of insurance that the person knows contains certain information or that purports to amend, alter, or extend certain coverage; prohibiting a person from preparing, issuing, or requiring, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with this Act; providing that a certificate of insurance is not a policy of insurance and does not amend, alter, or extend certain coverage or confer certain rights on a certificate holder; specifying the circumstances under which a certificate holder has a legal right to~~ providing that the terms and conditions of a certain notice shall be governed by the policy of insurance and may not be altered by a certificate of insurance; providing that a certificate of insurance or any other document prepared, issued, or required in violation of this Act is void and unenforceable; authorizing the Maryland Insurance Commissioner to examine and investigate the activities of any person that the Commissioner reasonably believes has been or is engaged in an act or practice prohibited by this Act; ~~authorizing the Commissioner to enforce this Act and impose certain penalties and remedies; requiring the Commissioner to adopt certain regulations;~~ providing for the application and construction of this Act; defining certain terms; requiring the Commissioner to conduct a certain study and report to certain committees of the General Assembly on or before a certain date; and generally relating to certificates of insurance and certificate of insurance forms.

BY adding to
Article – Insurance



Section 19-116
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19-116.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CERTIFICATE HOLDER” MEANS ANY PERSON, OTHER THAN A POLICYHOLDER, THAT REQUESTS, OBTAINS, OR POSSESSES A CERTIFICATE OF INSURANCE.

(3) (I) “CERTIFICATE OF INSURANCE” OR “CERTIFICATE” MEANS ANY DOCUMENT OR INSTRUMENT, HOWEVER TITLED OR DESCRIBED, THAT IS PREPARED OR ISSUED BY AN INSURER OR INSURANCE PRODUCER AS EVIDENCE OF PROPERTY INSURANCE OR CASUALTY INSURANCE COVERAGE.

(II) “CERTIFICATE OF INSURANCE” OR “CERTIFICATE” DOES NOT INCLUDE A POLICY OF INSURANCE OR AN INSURANCE BINDER.

(4) “INSURER” INCLUDES A PERSON THAT IS SELF-INSURED.

(5) “PERSON” INCLUDES A UNIT OF STATE OR LOCAL GOVERNMENT.

(6) “POLICYHOLDER” MEANS THE OWNER OF A POLICY OF PROPERTY INSURANCE OR CASUALTY INSURANCE.

(B) (1) THIS SECTION APPLIES TO ALL CERTIFICATE HOLDERS, POLICYHOLDERS, INSURERS, INSURANCE PRODUCERS, AND CERTIFICATES OF INSURANCE PREPARED OR ISSUED AS EVIDENCE OF INSURANCE COVERAGE ON PROPERTY, OPERATIONS, OR RISKS LOCATED IN THE STATE, REGARDLESS OF WHERE THE CERTIFICATE HOLDER, POLICYHOLDER, INSURER, OR INSURANCE PRODUCER IS LOCATED.

(2) THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO A STATEMENT, SUMMARY, OR EVIDENCE OF PROPERTY INSURANCE, INCLUDING A CERTIFICATE, REQUIRED BY A LENDER THAT HOLDS A LOAN SECURED BY:

- (I) A MORTGAGE;
- (II) A LIEN;
- (III) A DEED OF TRUST; OR
- (IV) ANY OTHER SECURITY INTEREST IN REAL OR PERSONAL PROPERTY AS SECURITY FOR THE LOAN.

~~(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT PREPARE OR ISSUE OR REQUIRE THE PREPARATION OR ISSUANCE OF A CERTIFICATE OF INSURANCE UNLESS THE CERTIFICATE OF INSURANCE FORM HAS BEEN FILED WITH AND APPROVED BY THE COMMISSIONER.~~

~~(2) ANY STANDARD CERTIFICATE OF INSURANCE FORM ADOPTED BY THE ASSOCIATION FOR COOPERATIVE OPERATIONS RESEARCH AND DEVELOPMENT (ACORD) OR THE INSURANCE SERVICES OFFICE (ISO) THAT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION IS DEEMED APPROVED BY THE COMMISSIONER.~~

~~(3) A PERSON MAY NOT ALTER OR MODIFY A CERTIFICATE OF INSURANCE FORM THAT IS APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (1) OF THIS SUBSECTION OR DEEMED APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(D) THE COMMISSIONER SHALL DISAPPROVE A CERTIFICATE OF INSURANCE FORM FILED WITH THE COMMISSIONER UNDER THIS SECTION, OR WITHDRAW APPROVAL OF A CERTIFICATE OF INSURANCE FORM, IF THE FORM:~~

~~(1) IS UNJUST, UNFAIR, MISLEADING, OR DECEPTIVE, OR VIOLATES PUBLIC POLICY;~~

~~(2) FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION; OR~~

~~(3) VIOLATES ANY LAW, INCLUDING ANY REGULATION ADOPTED BY THE COMMISSIONER.~~

~~(E) EACH CERTIFICATE OF INSURANCE MUST CONTAIN SUBSTANTIALLY THE FOLLOWING LANGUAGE: "THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS ON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, ALTER, OR~~

~~EXTEND THE COVERAGE PROVIDED BY, OR THE TERMS, EXCLUSIONS, OR CONDITIONS STATED IN, THE POLICY OF INSURANCE REFERENCED IN THIS CERTIFICATE."~~

~~(F) (1) A CERTIFICATE OF INSURANCE MAY NOT CONTAIN A REFERENCE TO ANY CONTRACT, INCLUDING A CONSTRUCTION OR SERVICE CONTRACT, OTHER THAN THE CONTRACT OF INSURANCE REFERENCED IN THE CERTIFICATE.~~

~~(2) NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH A CERTIFICATE OF INSURANCE IS PREPARED OR ISSUED, THE INSURANCE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF THE POLICY.~~

~~(G) (C)~~ A PERSON MAY NOT REQUIRE AN INSURER OR INSURANCE PRODUCER TO PREPARE OR ISSUE, OR A POLICYHOLDER TO PROVIDE, A CERTIFICATE OF INSURANCE THAT CONTAINS FALSE OR MISLEADING INFORMATION RELATING TO THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H) (D)~~ A PERSON MAY NOT PREPARE OR ISSUE A CERTIFICATE OF INSURANCE THAT THE PERSON KNOWS CONTAINS FALSE OR MISLEADING INFORMATION OR THAT PURPORTS TO AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H) (E)~~ A PERSON MAY NOT PREPARE, ISSUE, OR REQUIRE, EITHER IN ADDITION TO OR IN LIEU OF A CERTIFICATE OF INSURANCE, AN OPINION LETTER OR OTHER DOCUMENT THAT IS INCONSISTENT WITH THIS SECTION.

~~(J) (F)~~ (1) A CERTIFICATE OF INSURANCE IS NOT A POLICY OF INSURANCE AND DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

(2) A CERTIFICATE OF INSURANCE DOES NOT CONFER ON A CERTIFICATE HOLDER NEW OR ADDITIONAL RIGHTS COVERAGE BEYOND ~~THE RIGHTS~~ THE COVERAGE PROVIDED IN THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(K) (1) A CERTIFICATE HOLDER SHALL HAVE A LEGAL RIGHT TO NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER~~

~~SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE ONLY IF THE CERTIFICATE HOLDER IS LISTED AS A NAMED INSURED OR AN ADDITIONAL INSURED IN THE POLICY OR AN ENDORSEMENT TO THE POLICY, AND THE POLICY OR ENDORSEMENT REQUIRES THE NOTICE TO BE PROVIDED.~~

~~(2)~~ (G) THE TERMS AND CONDITIONS OF THE A NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE:

~~(H)~~ (1) SHALL BE GOVERNED BY THE POLICY OF INSURANCE;
AND

~~(H)~~ (2) MAY NOT BE ALTERED BY A CERTIFICATE OF INSURANCE.

~~(I)~~ (H) A CERTIFICATE OF INSURANCE OR ANY OTHER DOCUMENT PREPARED, ISSUED, OR REQUIRED IN VIOLATION OF THIS SECTION IS VOID AND UNENFORCEABLE.

~~(M)~~ ~~(1)~~ (I) THE COMMISSIONER MAY EXAMINE AND INVESTIGATE THE ACTIVITIES OF ANY PERSON THAT THE COMMISSIONER REASONABLY BELIEVES HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS SECTION.

~~(2)~~ ~~THE COMMISSIONER MAY ENFORCE THIS SECTION AND IMPOSE ANY AUTHORIZED PENALTY OR REMEDY AGAINST A PERSON THAT VIOLATES THIS SECTION.~~

~~(N)~~ ~~THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION, INCLUDING REGULATIONS THAT ESTABLISH AN APPROVAL PROCESS FOR CERTIFICATE OF INSURANCE FORMS.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Commissioner shall study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved by the Commissioner before use.

(b) The study shall include a review of states having similar requirements.

(c) The Commissioner shall include representatives of all interested parties in the conduct of the study.

(d) On or before December 1, 2011, the Commissioner shall report the findings and conclusions of the study, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 514

(Senate Bill 656)

AN ACT concerning

Property and Casualty Insurance – Certificates of Insurance and Certificate of Insurance Forms

FOR the purpose of ~~prohibiting a person from preparing or issuing or requiring the preparation or issuance of a certificate of insurance unless the certificate of insurance form has been filed with and approved by the Maryland Insurance Commissioner; providing a certain exception; prohibiting a person from altering or modifying a certain certificate of insurance form; requiring the Commissioner to disapprove a certificate of insurance form or withdraw approval of a certificate of insurance form under certain circumstances; requiring a certificate of insurance to contain certain language; prohibiting a certificate of insurance from containing a reference to a certain contract; prohibiting a person from requiring an insurer or insurance producer to prepare or issue, or a policyholder to provide, a certificate of insurance that contains false or misleading information relating to the policy of insurance referenced in the certificate; prohibiting a person from preparing or issuing a certificate of insurance that the person knows contains certain information or that purports to amend, alter, or extend certain coverage; prohibiting a person from preparing, issuing, or requiring, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with this Act; providing that a certificate of insurance is not a policy of insurance and does not amend, alter, or extend certain coverage or confer certain rights on a certificate holder; specifying the circumstances under which a certificate holder has a legal right to~~ providing that the terms and conditions of a certain notice shall be governed by the policy of insurance and may not be altered by a certificate of insurance; providing that a certificate of insurance or any other document prepared, issued, or required in violation of this Act is void and unenforceable; authorizing the Maryland Insurance Commissioner to examine and investigate the activities of any person that the Commissioner reasonably believes has been or is engaged in an act or practice prohibited by this Act; authorizing the Commissioner to enforce this Act and impose certain penalties and remedies; requiring the Commissioner to adopt certain regulations; providing for the application and construction of this Act; defining certain terms; requiring the Commissioner to conduct a certain study and report to certain committees of the General Assembly on or before a certain date; and generally relating to certificates of insurance and certificate of insurance forms.

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(3) (I) “CERTIFICATE OF INSURANCE” OR “CERTIFICATE” MEANS ANY DOCUMENT OR INSTRUMENT, HOWEVER TITLED OR DESCRIBED, THAT IS PREPARED OR ISSUED BY AN INSURER OR INSURANCE PRODUCER AS EVIDENCE OF PROPERTY INSURANCE OR CASUALTY INSURANCE COVERAGE.

(II) “CERTIFICATE OF INSURANCE” OR “CERTIFICATE” DOES NOT INCLUDE A POLICY OF INSURANCE OR AN INSURANCE BINDER.

(4) “INSURER” INCLUDES A PERSON THAT IS SELF-INSURED.

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(2) THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO A STATEMENT, SUMMARY, OR EVIDENCE OF PROPERTY INSURANCE, INCLUDING A CERTIFICATE, REQUIRED BY A LENDER THAT HOLDS A LOAN SECURED BY:

- (I) A MORTGAGE;
- (II) A LIEN;
- (III) A DEED OF TRUST; OR
- (IV) ANY OTHER SECURITY INTEREST IN REAL OR PERSONAL PROPERTY AS SECURITY FOR THE LOAN.

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~~(2) ANY STANDARD CERTIFICATE OF INSURANCE FORM ADOPTED BY THE ASSOCIATION FOR COOPERATIVE OPERATIONS RESEARCH AND DEVELOPMENT (ACORD) OR THE INSURANCE SERVICES OFFICE (ISO) THAT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION IS DEEMED APPROVED BY THE COMMISSIONER.~~

~~(3) A PERSON MAY NOT ALTER OR MODIFY A CERTIFICATE OF INSURANCE FORM THAT IS APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (1) OF THIS SUBSECTION OR DEEMED APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(D) THE COMMISSIONER SHALL DISAPPROVE A CERTIFICATE OF INSURANCE FORM FILED WITH THE COMMISSIONER UNDER THIS SECTION, OR WITHDRAW APPROVAL OF A CERTIFICATE OF INSURANCE FORM, IF THE FORM:~~

~~(1) IS UNJUST, UNFAIR, MISLEADING, OR DECEPTIVE, OR VIOLATES PUBLIC POLICY;~~

~~(2) FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION; OR~~

~~(3) VIOLATES ANY LAW, INCLUDING ANY REGULATION ADOPTED BY THE COMMISSIONER.~~

~~(E) EACH CERTIFICATE OF INSURANCE MUST CONTAIN SUBSTANTIALLY THE FOLLOWING LANGUAGE: "THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS ON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, ALTER, OR~~

~~EXTEND THE COVERAGE PROVIDED BY, OR THE TERMS, EXCLUSIONS, OR CONDITIONS STATED IN, THE POLICY OF INSURANCE REFERENCED IN THIS CERTIFICATE.”~~

~~(F) (1) A CERTIFICATE OF INSURANCE MAY NOT CONTAIN A REFERENCE TO ANY CONTRACT, INCLUDING A CONSTRUCTION OR SERVICE CONTRACT, OTHER THAN THE CONTRACT OF INSURANCE REFERENCED IN THE CERTIFICATE.~~

~~(2) NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH A CERTIFICATE OF INSURANCE IS PREPARED OR ISSUED, THE INSURANCE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF THE POLICY.~~

~~(G) (C)~~ A PERSON MAY NOT REQUIRE AN INSURER OR INSURANCE PRODUCER TO PREPARE OR ISSUE, OR A POLICYHOLDER TO PROVIDE, A CERTIFICATE OF INSURANCE THAT CONTAINS FALSE OR MISLEADING INFORMATION RELATING TO THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H) (D)~~ A PERSON MAY NOT PREPARE OR ISSUE A CERTIFICATE OF INSURANCE THAT THE PERSON KNOWS CONTAINS FALSE OR MISLEADING INFORMATION OR THAT PURPORTS TO AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H) (E)~~ A PERSON MAY NOT PREPARE, ISSUE, OR REQUIRE, EITHER IN ADDITION TO OR IN LIEU OF A CERTIFICATE OF INSURANCE, AN OPINION LETTER OR OTHER DOCUMENT THAT IS INCONSISTENT WITH THIS SECTION.

~~(J) (F)~~ (1) A CERTIFICATE OF INSURANCE IS NOT A POLICY OF INSURANCE AND DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

(2) A CERTIFICATE OF INSURANCE DOES NOT CONFER ON A CERTIFICATE HOLDER NEW OR ADDITIONAL RIGHTS COVERAGE BEYOND ~~THE RIGHTS~~ THE COVERAGE PROVIDED IN THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(K) (1) A CERTIFICATE HOLDER SHALL HAVE A LEGAL RIGHT TO NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER~~

~~SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE ONLY IF THE CERTIFICATE HOLDER IS LISTED AS A NAMED INSURED OR AN ADDITIONAL INSURED IN THE POLICY OR AN ENDORSEMENT TO THE POLICY, AND THE POLICY OR ENDORSEMENT REQUIRES THE NOTICE TO BE PROVIDED.~~

~~(2)~~ (G) THE TERMS AND CONDITIONS OF THE A NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE:

~~(H)~~ (1) SHALL BE GOVERNED BY THE POLICY OF INSURANCE; AND

~~(H)~~ (2) MAY NOT BE ALTERED BY A CERTIFICATE OF INSURANCE.

~~(H)~~ (H) A CERTIFICATE OF INSURANCE OR ANY OTHER DOCUMENT PREPARED, ISSUED, OR REQUIRED IN VIOLATION OF THIS SECTION IS VOID AND UNENFORCEABLE.

~~(M)~~ ~~(1)~~ (I) THE COMMISSIONER MAY EXAMINE AND INVESTIGATE THE ACTIVITIES OF ANY PERSON THAT THE COMMISSIONER REASONABLY BELIEVES HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS SECTION.

~~(2)~~ ~~THE COMMISSIONER MAY ENFORCE THIS SECTION AND IMPOSE ANY AUTHORIZED PENALTY OR REMEDY AGAINST A PERSON THAT VIOLATES THIS SECTION.~~

~~(N)~~ ~~THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION, INCLUDING REGULATIONS THAT ESTABLISH AN APPROVAL PROCESS FOR CERTIFICATE OF INSURANCE FORMS.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Commissioner shall study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved by the Commissioner before use.

(b) The study shall include a review of states having similar requirements.

(c) The Commissioner shall include representatives of all interested parties in the conduct of the study.

(d) On or before December 1, 2011, the Commissioner shall report the findings and conclusions of the study, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
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BULLETIN 08-34

To: All Property & Casualty Insurance Companies, All Property & Casualty Producers, and All Interested Parties

Re: Certificates of Insurance for Property & Casualty Policies

Date: November 7, 2008

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The Maryland Insurance Administration has become aware of the fact that some insurers and insurance producers are being asked to provide Certificate of Insurance forms which include language that seeks to amend or alter the coverage provided by the underlying insurance policy. As Certificates of Insurance are usually provided in lieu of providing the actual insurance policy and to serve as proof of insurance, it is important that a Certificate of Insurance clearly and accurately reflect the coverage being provided. A Certificate of Insurance may not be used as a means of altering, expanding or in any way modifying the terms and conditions of the underlying policy.

No person, including a licensed insurer or licensed insurance producer, may issue a Certificate of Insurance that either affirmatively or negatively amends, extends or alters, or otherwise modifies the coverage provided by the underlying insurance policy. It is a violation of the Insurance Article for a producer to alter standardized Certificate of Insurance forms to accommodate requests for "hold harmless" agreements or other types of clauses that seek to modify the terms or conditions of the underlying policy. No insurance producer should issue a Certificate of Insurance that does not accurately reflect the terms and conditions of the underlying insurance policy.

If you have any questions about this Bulletin, please contact David Diehl, Chief Administrator, Property & Casualty, by telephone at (410) 468-2320 or by e-mail at ddiehl@mdinsurance.state.md.us.

EXHIBIT

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Ralph S. Tyler, Insurance Commissioner

By: P. Randi Johnson
P. Randi Johnson, Associate Commissioner
Property & Casualty



The Independent Insurance Agents of Maryland, Inc.

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Glen Burnie, Maryland 21061

Phone (410) 766-0600 * Fax (410) 766-0993 * www.iiamd.org

Shelley M. Arnold, CPCU, AU, ARM, AAI, ACSR, President

January 3, 2012

Tinna Quigley
Director, Government Affairs
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

JAN 05 2012
Maryland Insurance
Administration

Dear Mrs. Quigley,

Thank you, on behalf of the Independent Insurance Agents of Maryland, Inc. ("IIAM"), for giving us the opportunity to submit comments to the Maryland Insurance Administration (MIA) pertaining to the study required by HB982/SB656 from the 2011 Legislative Session. As you are well aware, independent insurance producers have experienced a number of problems when dealing with certificates of insurance.

Whenever a business wants proof that someone with which it does business has insurance, it may obtain either (1) an insurance policy or insurance binder, which is in effect until the actual policy is issued, (2) or a certificate of insurance. A certificate of insurance is an informational document that provides a good faith snapshot or summarized reflection of the insurance policy to a third party.

A certificate offers convenience and simplicity, but is fundamentally different than an insurance policy. An insurance policy is the sole source of contractual rights, and only policies can convey rights to individuals or businesses. A certificate, on the other hand, merely provides useful information about the coverage in place as of the date of issuance and does not convey rights themselves or alter the insurance policy it describes.

A certificate is provided, as a courtesy and without compensation, to a third party with whom the insurer and the agent have no business relationship. Problems arise when one requesting a certificate attempts to alter its purpose, effect, and status. For example, some parties (1) request the issuance of certificates that purport to expand insurance coverage beyond the terms of the underlying policies, (2) demand the inclusion of unreasonable terms and conditions, and (3) otherwise attempt to force insurance agents to issue certificates that are deceptive and misleading.



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EXHIBIT

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We have provided below a list of specific examples encountered by producers with regards to certificates of insurance:

1. A certificate is requested by an insured in response to a business contract that seeks to hold the certificateholder harmless for "any and all liabilities" or similar wording. This request is extremely broad and ignores underlying policy provisions.
2. The certificate holder may request the insured to ask the insured's agent for a letter attesting to the fact that "in the opinion of the agent, the policy contains the insurance coverages/indemnifications required by the contract with the insured." In this instance, the certificate holder demanding that the insured's agent warrants coverage to the third party's benefit without exclusions. This is something that is impossible to do because the underlying policy is what controls. In addition, the contract might require that the certificate holder: (1) be named as an additional insured (something the insurer may or may not be willing to do), (2) be provided notice of cancellation (something not often provided for in an insurance contract for additional insureds), or (3) be provided with a type of coverage that the insurer cannot or will not provide. Such contracts may specify certain endorsements by form number and edition date that the insurer cannot provide because they have been superseded by newer editions and the older ones have been withdrawn. As a result, agents are sometimes asked to produce a certificate that cannot comply with the contract the insured has signed. Refusing to do so, agents are often faced with an assertion by the insured that they know of agents who, according to the certificate holder, can or will provide such certificates. Failure to do the same could mean the loss of an account for the agency. The agents that do not comply are often labeled the 'bad guys' and lose the account.
3. Specific Certificates: The Non-ACORD forms can cause multiple problems. The agent cannot sign these forms without the approval of the carrier. If a carrier refuses to accept the altered form, the agent loses the business and often, the contractor loses the contract. The specific certificates are often broader than the policy. The filing requirement would also (a) promote uniformity and standardization which would eliminate potential interpretation problems; and (b) limit the number of proprietary forms currently being used. Many of the proprietary forms are those of the municipalities in the area. All have different provisions, guidelines and mandatory inclusions.
4. Fraudulent Certificates. We have examples of certificates that were obtained by the agent, the policy cancelled and the certificate (with the agent's signature) altered, printed and given to requesting parties. This problem is not new and has been ongoing for about ten years.

The IIAM, in its efforts to obtain legislative relief from the problems stemming from certificates of insurance, sought language providing that "a person may not prepare or issue or require the preparation or issuance of a certificate of insurance unless the certificate of insurance form has been filed with and approved by the Commissioner." Further, it sought to deem approved "[a]ny standard certificate of insurance form adopted by the Association for

Cooperative Operations Research and Development (ACORD).” ACORD is the industry standard.

The purpose for the filing requirement was to prevent any person from altering or amending or requiring another person to alter or amend a Certificate of Insurance. The reason for the “deemer” language was to prevent the need for the MIA to incur any additional administrative costs related to the added filing requirement. Given that approximately 90% of certificates of insurance issued in the State are on ACORD certificate forms, only a small percentage of forms would need manual intervention by the MIA.

We have listed below for your convenience, a number of states currently requiring the Certificates of Insurance be filed with the Insurance Regulator:

- Alabama- Chapter 482-1-062- The regulation also mandates that insurers must file any certificate or memorandum of insurance that is not the standard ACORD or ISO Form “Certificate of Insurance.” In other words, non-ACORD and non-ISO forms cannot be used unless filed with the Department of Insurance.
- Idaho- In addition, any document intended to amend, add to or otherwise modify the terms of an insurance policy is considered a part of the policy under Idaho Code Section 41-1802 and is required by Section 41-1812 to be filed with the Department before it may be used in this state. It is a violation of this requirement for any person to issue a certificate of coverage that is not consistent with the underlying policy if the certificate has not first been filed with the Department of Insurance.
- Iowa- Iowa Code section 515.102(2009) authorizes the IID to examine and approve the use of all policy-related forms issued by an insurance company doing business in the state. Effective September 1, 2010, this requirement will be interpreted to require the approval of all certificate of insurance forms before such forms may be used. Standard certificate of insurance forms that have been filed by either the Association for Cooperative Operations Research and Development (ACORD) or the Insurance Services Office (ISO) and approved by the IID are not required to be filed again by an insurance company. In that situation, an insurance company only needs to submit to the IID a filing that indicates adoption by that company of a particular ACORD or ISO form.
- Kansas- KSA 40-955(b)-Certificate of insurance forms must be filed with the commissioner of insurance and approved prior to use.
- Kentucky- Kentucky’s statute KRS 304.14-120 says, “Prior to its use, each insurer shall file with the commissioner the form of certificate or memorandum of insurance which will be used by such company.”
- Louisiana- has passed the most comprehensive certificates of insurance legislation in the country, with the new law to be effective January 1, 2011. Among other things, the law clarifies that, “A certificate of insurance shall also not convey any contractual rights to the certificate holder.” The law requires that all certificates be filed and approved by the insurance commissioner except that ACORD and ISO certificates need only be filed. Once filed, a certificate cannot be altered or modified in any way without refiling and approval. <http://www.legis.state.la.us/billdata/streamdocument.asp?did=723763>

- Minnesota-Filing-An insurer not using the standard ACORD or ISO form "Certificate of Insurance" shall file with the commissioner, prior to its use, the form of certificate or memorandum of insurance coverage that will be used by the insurer. Filed forms may not be amended at the request of a third party.
- Mississippi-Each insurer or producer not using the standard ACORD or ISO Form "Certificate of Insurance", as filed with and approved by the Commissioner, shall file with the Commissioner for approval prior to use the form of the certificate of insurance or binder which will be used by such insurer or producer.
- North Carolina-In an Important Note to the instructions for the ACORD 25, the ACORD Forms Instruction Guide references North Carolina as one of several states where the certificate of insurance is a filed form and that it "has filed all of its certificates in these states."

No agent or insurer writing admitted business can alter a filed ACORD certificate without a re-filing and re-approval of the amended form by the Department of Insurance. This interpretation coincides with that of the North Carolina Department of Insurance, as outlined in a May 22, 2006 letter from Commissioner Jim Long.

- North Dakota-N.D.C.C. §§ 26.1-30-19(4) and 26.1-30-20 require insurance companies to file on a prior approval basis the insurance policy, certificate, contract or agreement they plan to use. Once filed and approved, the insurance policy, certificate, contract, or agreement may not be altered without prior approval of the Department.
- Oklahoma-Okla. Stat. tit. 36, § 3602 defines "policy" to mean "a contract of or agreement for effecting insurance, or the certificate thereof (emphasis added)." Okla. Stat. tit. 36, § 3610 requires insurers to file policies intended for use in Oklahoma with the Department for review and approval before the policy is used in Oklahoma. Section 3610 does not exempt a certificate of coverage from filing on the basis that it is not a part of the policy; while § 3610 exempts from filing those applications that the insurer does not require to be in writing or made a part of the policy, that exclusion is limited to applications meeting the requirements of the subordinate clause immediately following the words "or application form."

If IAM may be of any further assistance please contact us.

Sincerely,



Shelley Arnold, CPCU, AU, ARM, AAI, ACSR
President

MMA/bs