CERTIFICATES OF INSURANCE AND SENATE BILL 425

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INTRODUCTION

Senate Bill 425 represented a watershed change in how certificate of insurance will be issued and will dramatically effect the industry that relies upon certificates of insurance in support of additional insured status. In order to fully understand the significance of the changes to the law, an understanding of the law as it existed previous is needed.

A certificate of insurance is an instrument used to verify that an entity is insured. The organization ACORD (Agency-Organized Research and Development) first introduced standard certificates of insurance in 1976. The ACORD form is the most common used today. The certificate will provide such information as the insurer, insurance agency, insured, types of insurance, policy numbers, effective dates, limits, certificate holder, cancellation procedures, additional insureds, and the name of the representative authorizing the policy.

Typically, agents and brokers issue certificates of insurance on behalf of the insured contractor. Processing the certificates can be a time-consuming and troublesome task. Contractors often want the certificate immediately to be able to bid or get paid on a job, creating time constraints upon the agent in issuing the certificate. For example, let's assume your client is a roofing contractor, and a general contractor is considering your client for a job that is out to bid and requests a certificate of insurance. The certificate is important to the general contractor or property owner because it serves as evidence that your client has the correct insurance in place. In fact, the general contractor or property owner may not allow your client to bid the job, begin work or get paid until he or she has received the properly issued certificate.

Obviously, this puts the property owner, general contractor and subcontractor in a difficult position because they want to begin work or get paid, while making sure the proper parties are covered under the policy. But this also puts agents who are issuing these certificates of insurance in the difficult position of both serving their client and following procedures designed to avoid liability. Insurance agents are often asked to provide certificates that cannot comply with the contract the contractor may have already signed. In an effort to satisfy their clients, agents may issue certificates of insurance that do not accurately reflect the policy, leaving the insureds and certificate holders unaware of the potential liability this creates.

Thus, it is important that all parties have a better understanding of the uses and limitations of certificates of insurance. This article will discuss the law on certificates of insurance, common problems that arise when working with certificates, and what you can do to try to avoid these problems.

GENERAL LAW ON CERTIFICATES OF INSURANCE

There is no specific law in Texas that regulates certificates of insurance. As a result, disagreements over the purpose and scope of certificates are common and can lead to litigation. It is often difficult to predict the outcome when such arguments go before the courts. The purpose of this section is to identify some of the key issues arising from the use and reliance upon certificates of insurance.

I. Generally, Terms of the Policy Control

As a general rule, when policy language conflicts with the certificate of insurance, the policy language will govern.[1] For example, in

[1] *See RNA Invest., Inc. v. Employers Ins. of Wausau*, 2000 Tex. App. LEXIS 7804 (Tex. App.—Dallas 2000, Nov. 16, 2000, no pet.) (unpublished opinion) (certificates of insurance do not create insurance coverage where none existed); *C & W Well Service, Inc. v. Sebasta*, 1994 Tex. App. LEXIS 643 (Tex. App.—Houston [14th Dist.], March 24, 1994, no writ) (unpublished opinion) (noting insurance coverage is that provided by policy, not certificate of insurance); *CIGNA Ins. Co. of Texas v. Jones*, 850 S.W.2d 687 (Tex. App.—Corpus Christi 1993, no writ) (certificate of insurance does not extend the terms of the insurance policies certified therein).

Via Net v. TIG Ins. Co.,[2] Safety Lights sued its vendor, Via Net, for breaching the promise to provide additional insured coverage. Via Net agreed to name Safety Light as an additional insured, and its insurance broker issued a certificate of insurance listing Safety Lights as "holder" and stating that the "holder is added as additional insured re: General Liability." However, the certificate also stated:

> THIS CERTIFICATE 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 BELOW.

In the underlying suit, a Via Net employee sued Safety Lights after he was allegedly injured when a Safety Lights' employee allegedly dropped a 3000 lbs. steel plate on his hand. Safety Lights requested a defense from Via Net, and Via Net's insurance company denied the claim because the policy did not provide coverage for additional insureds, despite the language of the certificate of insurance. Safety Lights argued that there is little use for certificates of insurance if contracting parties must verify them by reviewing the entire policy.

The Texas Supreme Court found that the purpose of certificates of insurance is more general in that they merely acknowledge that a policy has been written and set forth the general terms of what the policy covers. The Court found that "[g]iven the numerous limitations and exclusions that often encumber such [insurance] policies, those who take such certificates at face value do so at their own risk."

Further, in *Brown & Brown of Tex., Inc. v. Omni Metals, Inc.* [3], the Houston First District Court of Appeals relied upon *Via Net*'s holding. In *Omni Metal Inc.*, Port Metal Processing stored steel belonging to Omni and processed the steel into coils. Port Metal purchased insurance from Transcontinental through Russell Lee Jacobe Insurance Agency, later acquired by Brown & Brown of Texas, Inc. Port Metal's president testified that he asked Jacobe to insure Port Metal's warehouse, including the steel they were storing. However, the policy excluded the property held in storage. In fact, the president testified that he asked Jacobe about the exclusion and was told that it meant Port Metal could not store property on its premises that was unrelated to its business. Jacobe testified that he knew Port Metal was charging a storage fee to its customers like Omni, and that he failed to explain to the president that the insurance policy excluded the steel Port Metal was storing. However, the president admitted not reading the insurance policy in effect.

Omni's bank required Omni to request certificates of insurance from Port Metal's agent. The certificate issued contained the incorrect statement that Port Metal's insurance coverage "INCLUDES PROPERTY OF OTHERS IN CUSTODY OF INSURED." The certificate further stated that it was for information purposes only.

Port Metal's warehouse burned down, and Omni lost $2.6 million in steel. Transcontinental denied coverage. Omni settled with Port Metal, but pursued suit against Trancontinental and Brown & Brown. The court held that Omni chose to rely on oral representations, something even a party to a contract cannot do if it directly contradicts the express, unambiguous terms of the written contract. Further, following the reasoning of *Via Net* - those who rely on certificates of insurance "do so at their own risk"- the court found that Omni could not detrimentally rely on certificates of insurance.

Majority of other states' courts also adhere to the general rule.[4] For example, the Illinois

[2] *Via Net v. TIG Ins. Co.*, 211 S.W.3d 310 (Tex. 2006).

[3] *Brown & Brown of Tex., Inc. v. Omni Metals, Inc.*, 2008 Tex. App. LEXIS 2065 *11 (Tex. App.—Houston [1st Dist.], Mar. 20, 2008, no pet. h.).

[4] *See Broderick Inv. Co. v. Strand Nordstrom Stailey Parker, Inc.*, 794 P.2d 264 (Colo. Ct. App. 1990) (court stated it concurred with other appellate

Court of Appeals also held that certificates of insurance do not confer any special rights to its holders in *Nat'l Union Fire Ins. Co. v. Glenview Park Dist.*[5] In *Nat'l Union Fire Ins. Co.*, a public owner sought coverage under a contractor's general liability policy on which it was named an additional insured. It sought coverage when one of the contractor's employees sued it after being injured in a scaffolding accident. The insurer denied coverage on the ground that the contractor's policy excluded coverage for damages arising from the negligence of the additional insured.

The owner argued that coverage should be extended in this case because the certificate of insurance delivered to it by the contractor did not contain the exclusionary language. The court ruled against the owner, noting that the language of the certificate made it clear that the document was issued for information only and did not amend, extend, or alter the coverage afforded under the policy.

II. Certificate Cannot Limit the Policy

Since a certificate of insurance does not amend or extend the language of the policy, it cannot limit the policy, as well. In *Dryden Central School District v. Dryden Aquatic Racing Team*[6], the school district entered into an agreement with the team granting the team permission to use the district's pool for its program. In exchange, the team agreed to provide a CGL policy to the school district. The insurance broker issued a certificate of insurance on March 20, 1990.

On February 13, 1990, a little over a month before the insurance certificate was issued, a minor sustained injuries when diving into the shallow end of the pool. The district first received written notice of the claim for damages and medical expenses on April 23, 1990. The parents of the minor sued the school district and the team, and the school district sought coverage as an additional insured under the CGL policy obtained by the team.

The insurer denied indemnity and defense based on an affidavit of the broker, who said that it was not the insurer's intention to have the certificate of insurance extend coverage retroactively for the accident on February 13, 1990. However, the court disagreed with the insurer stating that the certificate referenced the policy number, and the policy was in effect on both the day of the accident and when the claim was first filed.

III. No Obligation to Notify of Changes or Cancellation

The ACORD form contains language that the insurer will "endeavor" to send notice to the certificate holder if any of the policies are canceled. However, adhering to the general rule that the certificate does not modify the policy, courts have held that the insurer is under no obligation to notify of changes or cancellation unless stated in the policy. For example, in *Scottsdale Insurance Co. v. Shahinpour*[7], the court determined whether the "will endeavor" language requires an insured to provide notice of cancelation to the certificate holder. The court held that the language provides that the insurer, not the insured, "will endeavor," but it is not obligated to give notice.

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decisions which have found certificates of insurance to be informational documents only, which are subject to the terms of the policy); *Bradley Real Estate Trust, et al. v. Plummer & Rowe Ins. Agency*, 609 A.2d 1233 (N.H. 1992) (New Hampshire's Supreme Court stated the "certificate is a worthless document; it does no more than certify that insurance existed on the day the certificate was issued"); *Glynn v. United House of Prayer for All People*, 741 N.Y.S2d 499 (N.Y. App. Div. 2002) (finding that "a certificate of insurance, by itself, is insufficient to raise a factual issue as to the existence of coverage").

[5] *Nat'l Union Fire Ins. Co. v. Glenview Park Dist.*, 594 N.E.2d 1300 (Ill. App. Ct. 1992), *aff'd in part, modified in part*, 632 N.E.2d 1039 (1994).

[6] *Dryden Central Sch. Dist. v. Dryden Aquatic Racing Team*, 600 N.Y.S.2d 388 (N.Y. App. Div. 1993).

[7] *Scottsdale Ins. Co. v. Shahinpour*, 2006 U.S. Dist. LEXIS 23299 (S.D. Tex. March 14, 2006).

Additionally, in *Mountain Fuel Supply v. Reliance Ins. Co.*[8], the owner of a gas-sweetening plant obtained a certificate of insurance from its general contractor, which named it as an additional insured in its policy starting June 9, 1979. The certificate indicated that the policy was expiring on June 9, 1980, and that the owner was to receive 60 day notice prior to the cancellation of the policy. On June 9, 1980, a new policy was issued, but the policy did not name the owner as an additional insured, and the certificate of insurance did not create any additional insured status. Further, neither the general contractor nor its insurer sent notice of the cancelation of the prior policy to the owner.

On January 26, 1981, a worker fell off stairs at the plant and obtained a settlement against the owner. The owner then filed suit against the general contractor's insurer for coverage of the claim. The owner argued that since it was a named insured under the policy ending June 9, 1980, its coverage could not be reduced in the renewal policy without the insurer first providing it with specific notification of the reduction. The court held that "absent a policy or statutory provision to the contrary, an insurer is under no duty to give notice of a policy's expiration date."

The bottom line is that the terms of the policy control. The standard ACORD form includes the below language in an attempt to make this intent clear:

> This certificate is given 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 listed below.

This language is not a legal requirement, and therefore non-ACORD forms may not provide this information to its holders. Thus, insurers should educate their insureds that, despite the language of the certificate, the terms of the policy control.

IV. Exceptions to the General Rule

While Texas courts appear to strictly apply the general rule, insurers and agents relying on this strict application may be doing so at their own risk because courts have ruled in favor of the certificate holder in some disputes. For instance, in *Bucon, Inc. v. Pennsylvanis Man. Assoc. Ins. Co.*[9], a property owner contracted with a general contractor to supply the materials and erect the roof of a building. The general contractor hired a subcontractor to erect the roof system at the site, and the contract required the subcontractor to hold harmless and indemnify the general contractor and owner for all claims arising out of the subcontractor's performance of the work. The contract also required the subcontractor to furnish and maintain evidence to the general contractor of comprehensive general liability insurance, including coverage for the products and completed operations hazard, naming the general contractor as an additional insured.

The subcontractor sent a certificate of insurance to the general contractor. It stated that the insurance had been issued to the subcontractor and summarized the types of coverages and limits. But the certificate did not state that the general contractor was an additional insured, so the general contractor rejected the certificate. The subcontractor notified its insurer, and the insurer issued a new certificate, just like the one before, only adding that the general contractor was an additional insured.

During construction, one of the subcontractor's employees was injured, and he sued both the general contractor and the property owner, and both sought protection under the certificate of insurance. The insurer denied coverage because the policy was never amended to include the general contractor as an additional insured. The insurer said the designation of the

[8] *Mountain Fuel Supply v. Reliance Ins. Co.*, 933 F.2d 882, 889 (10th Cir. 1991)

[9] *Bucon, Inc. v. Penn. Manuf. Assoc. Ins. Co.*, 547 N.Y.S.2d 925 (N.Y. App. Div. 1989)

general contractor as an additional insured on the certificate of insurance was clerical error.

The court ruled that by issuing the certificate, the insurer was estopped from denying coverage for the general contractor. The evidence established that the insurer was informed that the general contractor had required a revised certificate, and the general contractor relied on it to permit the work. Unlike *Omni Metals Inc.*, the court found the general contractor's reliance on the certificate was reasonable, despite clear form language that the certificate did not "amend, extend or otherwise alter the terms and conditions of insurance coverage contained in the policy."

One notable difference between *Omni Metals, Inc.* and *Bucon, Inc.* is that in *Bucon, Inc.*, the actual insurance company that issued the policy also prepared and executed the certificate of insurance. In *Omni Metals, Inc.*, a separate insurance agent who the insured purchased the policy through issued the certificate. Thus, there may be argument that the insured is estopped from denying coverage in *Bucon, Inc.* because they actually issued the certificates, unlike in *Omni, Inc.*

Another case where the court found the certificate of insurance controlled over the policy is *B.T.R. East Greenbush v. General Accident Co.*.[10] In *B.T.R. East Greenbush.*, a steel fabricator issued a certificate of insurance on June 18, 1988, naming a general contractor and a property owner as additional insureds on a policy issued by General Accident Company. The policy was for a one year period starting December 23, 1987. However, the policy was not endorsed to provide additional insured status.

One of the steel fabricator's employees was injured at the construction site on July 16, 1988, the day before the certificate was issued. The general contractor and property owner commenced a declaratory judgment action against the steel fabricator and its insurer seeking a declaration that they are insured under the policy. The trial court granted coverage sought.

On appeal, the defendants argued that the certificate did not confer any rights on the certificate holders and, in fact, it clearly stated that it did not "amend, extend, or alter the coverage" provided by the policies. The defendants further argued that the date of the certificate evidences its claim that the property owner and general contractor were not insureds under the policy on the injury date. However, the court found that the insurer failed to offer any extrinsic evidence of its intent that the issuance date of the certificate was controlling or that the general language of the certificate superseded the designation of the project owner and general contractor as additional insureds.

The court of appeals ruled in favor of the property owner and general contractor stating that the "only reasonable interpretation to be given to the phrase 'ADDITIONAL INSURED' on the certificate of insurance, followed by plaintiffs' names is that General Accident meant to extend coverage to them under terms of the policy . . . ."

Further, in *John Bader Ins. Co. v. Employers Ins. of Wausau*[11], a property owner leased its building to a company that agreed to provide liability coverage for the owner with respect to the owner. The property owner received a certificate of insurance that provided that in the event of cancellation, ten days written notice of cancellation was to be provided to the insured. Rather than specifying an expiration date and occurrences which would terminate coverage, the certificate stated that coverage was effective until cancelled.

The property owner was later sued by a person who was injured when a wall of the property fell on him. The owner tendered a defense to the tenant's insurance company, who declined coverage. The property owner sought a declaratory judgment action against the

[10] *B.T.R. East Greenbush v. Gen. Accident Co.*, 615 N.Y.S2d 120 (N.Y. App. Div. 1994)

[11] *John Bader Ins. Co. v. Employers Ins. of Wausau*, 441 N.E.2d 1306 (Ill. App. Ct. 1982).

insurance company. The trial found that the insurance policy was in full force and effect on the date of the accident and based this finding primarily on insurance company's failure to notify the property owner of cancellation of the policy as required by the certificate of insurance.

The insurance company appealed. The appellate court found that notice was required by the terms of the certificate. Further, the court found that the insurance company cannot resort to provisions of the master policy to support its contention because the property owner was never issued a copy of this policy. Therefore, the policy was effective on the date of the accident.

As we have seen, there are unusual cases where the certificate of insurance controls over the policy. We also have seen situations where the court will rule that the insurer is estopped from denying coverage because the insurer's conduct created justifiable reliance upon the coverage it stated it would issue. These cases illustrate that while there is a general consensus that the language of the policy controls, there are exceptions based upon unique circumstances. Therefore, agents must be careful not to frivolously issue certificates of insurance relying on the general rule.

SENATE BILL 425: THE ORIGINS

The past ten years have seen an increase in errors and omissions claims against agents related to the filing of certificate of insurance. Agents were being forced to deal with a wide variety of requests related to including information of certificates of insurance.

One of the most common problems occurred when certificate holders were listed as additional insureds on certificates without the policy actually reflecting that. As the above cases illustrate, a contractor or property owner is not added to the policy as an additional insured just because the certificate lists them as an additional insured. Often times, certificate holders did not realize they are not listed as additional insureds on the policy until litigation has ensued and they seek a defense from the insured's general liability policy and are denied.

In addition, agents are sometimes asked to produce certificates that comply with impossible or impractical requests. For example, a contractor may need coverage for an uninsurable request, and they may need it immediately. When refusing to do so, agents are often faced with the claim from the insured that they know of agents that can and will provide such certificates. In an attempt to not lose a client, these impossible or difficult requests often lead to the issuance of fraudulent certificates by insurers.

As we previously discussed, the ACORD form contains language that the insurer will "endeavor" to send notice to the certificate holder if any of the policies are canceled. However, contractors or property owners often will try to negotiate around this and require the subcontractor to send notice of cancellation. This keeps the agent actively involved in a dispute because of the certificate language, increasing exposure.

Moreover, there were situations where a contractor was awarded a job where the insurance requirements include "not less than" $1,000,000 in CGL coverage. However, the contractor has a $2,000,000 CGL occurrence limit, but wants the certificate of insurance to show only a $1,000,000 limit. Agents were under pressure from their clients to not fully represent the coverage available.

Because of the increased confusion and persistent additional language being included on certificates, the Texas Department of Insurance issued the following bulletin in September 2006:[12]:

> The Department reminds all carriers and agents that a certificate of insurance must clearly and accurately state the insurance coverage provided. A certificate of insurance that obscures or misrepresents the insurance coverage

[12] Commissioner's Bulletin #B-0035-06.

> provided under the insurance policy is a violation of the Insurance Code, including §§541.051, 541.061, and 4005.101(b)(5) and (6). Additionally, agents are reminded that they are prohibited from altering the terms or conditions of a policy under Insurance Code §§4001.051(c) and 4001.052(b). Violation of the provisions of Chapter 541, 4001, or 4005 may result in administrative penalties and/or license revocation.

The TDI was sending a message to the Courts to get a handle on this problem. Texas courts had been hard-pressed to find an agent liable for misrepresenting the insurance coverage in a certificate of insurance. Courts have made it clear that a party cannot detrimentally rely upon either certificates of insurance or oral representations when they contradict the express, unambiguous terms of the policy. However, the Texas and national judicial landscape and political environment was changing, and creating a less favorable climate for insurance carriers.

For example, *Binyan Shel Chessed, Inc. v. Goldberger Ins. Brokerage, Inc.*[13] demonstrates that agents and brokers who rely on the premise that certificates are not contracts and cannot result in agency liability may be doing so at their own risk. In *Binyan Shel Chessed, Inc.*, a property owner contracted with a builder to perform renovations. The builder's insurance broker sent the owner a certificate of insurance that said the builder had liability insurance with Colonial and that the owner was named as an additional insured. Shortly thereafter, a worker for one of the builder's subcontractors was injured. In this action, the owner, builder and the broker sought coverage from Colonial.

Colonial moved for summary judgment claiming they do not have a policy covering the builder nor the owner. The broker separately moved for summary judgment on the grounds that there was no privity of contract between it and the plaintiff, and the certificate of insurance contained a disclaimer that it conferred no rights on the certificate holder. The court held that further discovery would yield no basis to impose liability upon Colonial, which did not issue an insurance policy. However, with regard to the broker, the court found that summary judgment at this juncture would be premature. Because the certificate was issued over six months after the policy purportedly went into effect, a question arises as to why the broker was not aware that the policy had not been paid for at the time the certificate was issued. Further, a question arises as to how the broker came to use a policy number with a prefix which was never a policy prefix in existence for this carrier. The court found that depositions should therefore be held.

While this case was decided in New York, it illustrated that it had become difficult to predict the outcome when disputes over certificates of insurance go before the courts. Agents were dealing with an environment of uncertainty regarding their exposure to liability and the pressure from clients was continuing to escalate. In response to this increased exposure, E&O coverage rate were escalating and the Courts provided little clarity. The time was ripe for the Legislature to step in.

SENATE BILL 425: THE LANGUAGE AND THE EFFECT

In this climate, industry organizations such the Independent Insurance Agents of Texas (IIAT) lobbied hard for the passage of proposed Senate Bill 425. Three Republican Senators, John Carona of Dallas, Kelly Hancock of Fort Worth and Glenn Hegar of Katy sponsored the legislation. The Bill passed the Senate on March 17, 2011. Passed through the House on May 23, 2011. Senate Bill 425 was signed into law by the Governor of June 17, 2011. The bill was codified into law in Chapter 1811 of the Texas Insurance Code and took effect on January 1, 2012.

[13] *Binyan Shel Chessed, Inc. v. Goldberger Ins. Brokerage, Inc.*, 795 N.Y.S.2d 619 (N.Y. App. Div. 2005).

I. Applicability of the New Law

The first and likely most sweeping aspect of the new law is that it was applicable to more persons than just insurance agents. Specifically, the statute states:

> Sec. 1811.002. APPLICABILITY. (a) This chapter 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. TEX. INS. CODE § 1811.002(a).

This language is critical as it evidences a clear intent to apply the law to all entities with an interest in the certificate – not just agents.

II. Requirement of TDI Approval for Certificates

The most significant aspect of the legislation is the requirement that all certificates of insurance must be filed with the TDI for approval. Use of pre-approved forms (see ACCORD or ISO forms) is permitted under Section 1811.103 of the Insurance Code. The language used by the Legislature is clear: only TDI approved forms are to be used:

> Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER.
>
> (a) A property or casualty insurer or agent may not issue a certificate of insurance or any other type of document purporting to be a certificate of insurance if the certificate or document alters, amends, or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.
>
> (b) A certificate of insurance or any other type of document may not convey a contractual right to a certificate holder

Moreover, the statute further provides that no agent can modify or alter an approved form without the pre-approval of the TDI. TEX. INS. CODE § 1811.053.

III. Other Prohibitions To Certificate Holders

As mentioned above, the law is significant in that in additions to dealing with agent liability considerations, it takes steps to mitigate the difficult situations that agents are placed in by their clients and certificate seekers by prohibiting certain conduct and providing bright lines for the requests of certificates.

First, the statute states that no person can require an agent insurer, agent, or policyholder to issue a certificate that contains any false or misleading information concerning the policy of insurance to which the certificate refers. TEX. INS. CODE § 1811.054.

In addition, the statute further prohibits any person from requiring any other documents in addition to or lieu of the approved certificate of insurance. TEX. INS. CODE § 1811.055. This is where the Legislature has truly provided cover for the agents. It is a violation of the law to ask for anything more than the TDI-approved certificate. This resolves most of the liability considerations that have been building for the past decade.

Last, if any certificate holder receives notice in writing that a certificate has been disapproved by the TDI they are to immediately cease reliance on the form. TEX. INS. CODE § 1811.056.

IV. Enforcement Mechanisms

The law provides for various enforcement mechanisms to be used by TDI to ensure compliance. First, the statute carries a civil penalty for any person (which includes agents, insurers or certificate holders/seekers) who

willfully violates the statute of up to $1,000 per violation. The commissioner of the TDI may request the Attorney General's office to initiate the suit, which is to be brought in Travis County. In addition to the civil penalties, the statute contemplates that the AG can seek injunctive relief as well. See TEX. INS. CODE § 1811.203.

In addition to the civil penalties, the statute also grants broad powers to the Insurance Commissioner for enforcement:

> Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter, the commissioner may:
>
> (1) issue a cease and desist order;
>
> (2) seek an injunction under Section 1811.203;
>
> (3) request that the attorney general recover a civil penalty under Section 1811.203;
>
> (4) impose sanctions on the insurer or agent as provided by Chapter 82[14]; or

V. Certificate Filing and Approval Requirements

Under Senate Bill 425 only approved certificate of insurance forms may be issued to an insured. As mentioned above, this requires TDI approval.

The TDI can collect a $100 fee for filing of a certificate for approval. This will likely lead to increased reliance on the standard certificate issued by the Insurance Service Office (ISO) or the Association for Cooperative Operations Research and Development of the American Association of Insurance Services (ACORD). See TEX. INS. CODE § 1811.103. The statute pre-approves ISO and ACORD forms and they are deemed approved on the day filed with the department.

Otherwise, the statute requires that all forms contain the phrase "for information purposes only." See TEX. INS. CODE § 1811.101(a)(2). Moreover, for approval the TDI must determine that the certificate does not convey any rights not contained in the policy that is referenced. See TEX. INS. CODE § 1811.101(b)(1).

A filed form is deemed approved after the expiration of sixty days unless the Commissioner disapproves the form prior to the expiration of the period. See TEX. INS. CODE § 1811.101(c). The Commissioner may not extend this period by more than 10 days, and the agent or insurer must be notified of the extension in advance of the expiration. See TEX. INS. CODE § 1811.101(d).

This is the potential loophole. The TDI budget has not been increased exponentially to accommodate this new oversight role. The big concern is that the TDI simply drops the ball and forms just get approved by running out the clock.

CONCLUSION

The new world of certificates of insurance should be one with fewer pitfalls for agents and insurers. With bright line rules and a legal inability to meet client demands, the "heat" should be off the insurer to place themselves in ever more precarious positions.

That being said, the agency force and staff need to fully comply with the law because the judicial trend of indecision is likely at an end with the law and this will be standard for agent liability moving forward. Failure by agents to apply the standards not only can result in the penalties contemplated by the statute, but will be

[14] Chapter 82 of the Insurance Code provides sanctions for the cancellation, revocation or suspension of agent licensure. In addition, the sanction provisions also provide administrative penalties and restitution to be paid any resident or insured harmed by a violation the Insurance Code or TDI regulations. See TEX. INS. CODE § 82.051, *et seq*.

considered negligence per se in a professional liability action brought by a policyholder against their agent.