

PROFESSIONAL

Insurance Agents

Please be advised:

New York law forbids certain certificates of insurance requests

(Chapter 552 of the Laws of 2014)

Prepared by Professional Insurance Agents of New York State Inc.

On Jan. 29, 2015, New York Gov. Andrew Cuomo signed legislation into law (Chapter 552 of the Laws of 2014), which prohibits any person from “willfully requiring” a certificate of insurance that contains false or misleading information. The new law also authorizes the state’s Department of Financial Services to impose penalties for violations.

Effective July 28, 2015, this new section of Insurance Law makes it illegal to require a certificate of insurance that includes language of any kind, including warranties of coverage, that is not expressly found in the underlying policy.

Q. What certificates are covered under the new law?

A. According to the law, a certificate is **any document or instrument, no matter how titled or described**, prepared or issued by an insurer or insurance producer as evidence of property/casualty insurance coverage.

Q. Are “addendums” considered certificates under the new law?

A. Yes, under the new Section 501(a). This means that any certificate “addendum” must be an approved form [Section 502(a)] and it must not misstate the terms of the policy [Section 502(b)].

Q. Does this new law govern E&S certificates?

A. Yes, Article 5 (the new law) applies to an “insurer” as defined in Insurance Law Section 1101, which includes unauthorized excess-line insurers.

Q. Can state agencies continue to use their forms?

A. Yes, but only if they are specifically approved by the superintendent [Section 502(a)].

Q. What does the new certificates law prohibit?

A. New Insurance Law Section 502 sets forth prohibited COI practices including, among others:

- requiring the issuance of an unapproved certificate of insurance form;
- requiring that a COI contain additional terms, conditions or language, including warranties or guarantees, of any kind **that is not found in the insurance policy**;
- requiring a certificate that amends, extends or alters the coverage provided by the insurance policy to which the certificate of insurance makes reference; and
- requiring a certificate that confers to any person any rights beyond those expressly provided by the policy of insurance referenced therein.

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Q. Who does the law apply to?

A. This law applies to:

- individuals, businesses, associations and other entities;
- public entities (the State of New York, counties, cities, towns, villages, school districts, public libraries, public corporations and similar entities); and
- New York state, local, interstate and international public authorities and their employees, officers and elected officials.

Q. What are acceptable certificate forms?

A. Certificate holders can only require a certificate that is:

1. a form issued by the insurer providing the coverage;
2. a standard certificate form issued by an insurance industry-standard-setting organization (such as ISO or ACORD) and approved by the NYDFS; or
3. a form approved by the NYDFS. A list of approved forms is available online at http://www.dfs.ny.gov/insurance/insurers/cert_ins_approved.htm.

Q. What prohibitions apply?

A. Certificate holders may not require a certificate as a condition to:

- award contracts,
- permit work to start, or
- pay for work completed;

unless the certificate is:

1. a form promulgated by the insurer issuing the policy referenced in the certificate of insurance, or
2. a standard certificate of insurance form issued by an industry standard-setting organization and approved for use by the superintendent, or
3. any other form approved for use by the superintendent.

Q. Are “attestation” forms allowed?

A. No, for two reasons:

- They are not a standard form, a carrier form or a form approved by the superintendent [Section 502(a)]; and
- Section 502(b) specifically states that “warranties or guarantees” that the insurance policy provides coverage (if it does not) are prohibited.

Q. Are “certification by broker” forms allowed?

A. No, unless they are filed and approved by the superintendent, as these are not standard carrier forms. Some brokers are presented with “certification by broker” forms that represent that the producer signing the form has submitted a certificate that is "accurate in all material respects" and that it's issued by a company that is “A rated.” In some instances, the NYDFS has approved this type of form. See: http://www.dfs.ny.gov/insurance/insurers/cert_ins_approved.htm.

Q. What penalties will someone face for requiring a prohibited certificate?

A. The NYDFS may assess fines up to \$1,000 for the first offense and \$2,000 for each subsequent offense for all persons who willfully require improper certificate language.

Q. How does one obtain the superintendent’s approval to use liability certificate of insurance forms?

A. All requests for liability insurance certificates of insurance form approvals should be emailed to inscert@dfs.ny.gov. More information is available at http://www.dfs.ny.gov/insurance/cert_insurance.html.