

INSURANCE CERTIFICATES: NEW LAW'S REQUIREMENTS

by
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Although the Insurance Commissioner issued a Directive in January 2011 and the General Assembly subsequently passed a statute later that year intended to define what an insurance certificate was and what it could and could not contain, the author is still getting questions on the IIAG's Free Legal Service hotline that he operates about what an insurance agent can and cannot do when he or she is requested to issue an insurance certificate by an insured. This article will answer that question.

The statute passed by the General Assembly, O.C.G.A. §33-24-19.1, expands upon the Directive that was issued by the Insurance Commissioner and will take precedence over that Directive in the event that there is any conflict between their provisions. Under that statute, a certificate of insurance is defined as "any document or instrument, no matter how titled or described, which is prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage." As in the Directive, a certificate of insurance does not include insurance information cards, such as those issued for motor vehicle insurance coverage. However, although the statute does not apply to accident, sickness, and disability insurance, the Directive does.

For all other types of property and casualty insurance, the statute provides that no person may either issue or request the issuance of a certificate of insurance using a form that has not been filed with and approved by the Insurance Commissioner. Any such certificate must contain, at a minimum, the following language: "This certificate of insurance does not amend, extend, or alter the coverage, terms, exclusions, and conditions afforded by the policies referenced herein." Unless the Insurance Commissioner approves otherwise, any such certificate must also contain the following additional language: "This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder." All of this language was taken straight from the Commissioner's Directive.

The statute provides that the certificate of insurance forms that have been promulgated by ACCORD and ISO are deemed to have already been approved by the Insurance Commissioner and are not required to be filed with the Commissioner if they otherwise comply with the statute's requirements. The author has been informed by the Insurance Commissioner's Office that, although the Insurance Commissioner has approved other certificate of insurance forms, those forms do not differ significantly from the ACCORD and ISO certificate forms.

Unlike some statutes that regulate conduct, the certificate of insurance statute's requirements apply to anyone who issues and anyone who requests the issuance of such a certificate. So in addition to issuing or requesting the issuance of a certificate of insurance that is not on an approved form, it is illegal to either issue or request the issuance of a certificate of insurance that "contains any false or misleading information concerning the policy of insurance to which the certificate makes reference" and to issue or request the issuance "in addition to or in lieu of a certificate of insurance, an opinion letter or other document or correspondence that is inconsistent with" the provisions of the statute. It is also illegal for the issuer of a certificate of

insurance to put anything on that certificate that does not accurately reflect the coverage provided by the insurance policy or policies that are the subject of the certificate.

The statute goes on to affirmatively state that, “A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference.” Such a certificate does not confer on the party to which it is issued any rights beyond the rights set forth in the insurance policy or policies to which it refers. In addition, a certificate of insurance cannot refer to contracts of any kind, other than the insurance policy or policies that are the subject of the certificate, and no other contracts shall have any effect on the terms and conditions of those policies.

The statute specifically addresses what has probably been the most prevalent problem with certificates of insurance by stating that, “A certificate holder shall have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance only if the person is named within the policy or any endorsement and the policy or endorsement requires notice to be provided.” A certificate of insurance cannot change the notice provisions of the insurance policy or policies to which it refers.

The statute applies to all persons involved with the issuance of a certificate of insurance for “property, operations, or risks located” in Georgia, regardless of where those persons may be located. Therefore, the statute will apply to any construction project located in Georgia regardless of where the owner of that project or the contractors involved in it are located. Any certificate of insurance or other document issued or requested in violation of the statute is null and void and will have no force or effect. A violation of the statute is punishable by a fine of up to \$5,000, and the Insurance Commissioner is given the authority to investigate any activities that the Commissioner reasonably believes may be in violation of the statute and to enforce its provisions against any violator of the statute.

The new insurance certificate statute gives agents a powerful tool to use to resist demands by insureds and others for the issuance of such certificates that do not satisfy its requirements. An agent can now tell such a person that, not only is it illegal for the agent to do what is being asked, it is illegal for the person to ask the agent to do it. The author assisted IIAG in developing a form letter that agents could use to respond to requests for the issuance of a certificate of insurance that did not satisfy the new statute’s requirements. A copy of that letter can be found on the Articles page of the author’s website at www.decaturlaw.com.

This article is not intended to provide “legal advice” on the issues discussed in it. It is only for information purposes. The reader should seek advice from an attorney who is knowledgeable in this area of the law about their specific situation before acting. For other articles of interest to insurance agencies and agents, please see the website of Joyner & Burnette, P.C., at www.decaturlaw.com or Mr. Burnette’s blog, [Georgia Agency Resource](http://www.insuranceattorneygeorgia.com), at www.insuranceattorneygeorgia.com.

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