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Subject: Louisiana's New Certificates of Insurance Law Effective 1-1-11

Attachments: Act 1017 of the 2010 Regular Session of the Louisiana Legislature
DRAFT LDI Regulation 99 Implementing Act 1017

Background: Certificates of insurance have historically been innocuous, routine documents which were processed with little concern beyond accuracy. Their unassuming purpose was simply to verify the existence of insurance. In recent years, certificates of insurance have become source of controversy, litigation, rising E&O claims, and a serious burden on an agency's time and resources.

Main Points: Today, certificates of insurance have morphed into a multi-party tug-of-war involving insureds, insurers, certificate requestors, various other third parties, attorneys, certificate creators (ACORD and proprietary forms), and, in the middle: insurance agencies (and their E&O insurers). In recent years, the myriad problems and turmoil with certificates have attracted new players – regulators and lawmakers.

Demands by certificate requestors and others caused the certificate to change from being a mere "snapshot of the policy" to a warranty or guarantee that numerous terms and conditions, often those that were included in contracts signed by insureds, were covered by the insurance represented by the certificate. In addition, many requestors of certificates demanded that the certificate itself be altered or amended to include various provisions, such as in the notice of cancellation. In a large number of situations, terms and conditions being added to the certificate were in conflict with provisions of the insurance policy. Even more onerous, some agents are being required to sign affidavits attesting that the policyholder maintains all of the insurance coverages required by the (sometimes outrageous) provisions of a contract between the insured and a third party.

Therefore, agents who complied with such requests opened themselves up to litigation from all sides, and also got the attention of regulators for potential fraud. The fact that certificates included the following disclaimer was often not a sufficient shield from controversy and adverse litigation: *"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."*

Certificates of insurance have become a major concern for agents all over the country. The Big I Virtual University has a [Certificates of Insurance Resource Section](#) with a wealth of information on issues, problems, laws and regulations related to certificates of insurance

Long before the current uproar over certificates of insurance, Louisiana statutes provided clear legal guidelines governing how an insurance contract may be altered. As one example, 22:881 (enacted in 1958, originally as 22:654) expressly states: *"Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to or made a part of the policy."* Accordingly, a Bulletin issued by the Department of Insurance provided the Department's strict interpretation of this statute regarding certificates of insurance: *"A COI is not a rider, endorsement or application. Any COI issued by a producer, broker or insurer that violates LSA-RS. 22:881 may subject the producer, broker or insurer to the full array of administrative sanctions available to the LDOI. In addition to those administrative penalties, the Louisiana Insurance Code prescribes criminal penalties for knowingly supplying fraudulent insurance documents."*

On July 1, 1981, the Louisiana Department of Insurance issued Directive 42 regarding changes to certificates of insurance. The Department later summarized the guidelines for amending certificates contained in Directive 42 as follows: *"Through Directive 42 the LDOI made it clear that any COI was merely a synopsis of the underlying policy and could in no way amend, alter or modify the terms and/or conditions set forth in the underlying insurance policy."*

In 1992, Louisiana statute 22:44 was passed (originally as 22:1462.1), in which the issue of fraud was addressed in the statute, as follows: *"22:44A. It shall be unlawful for any person to intentionally and knowingly supply false or fraudulent material information pertaining to any document or statement required by the Department of Insurance. B. Whoever violates the provisions of this Section shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than five thousand dollars, or both."*

The 2008 Louisiana Legislature passed 14.72.1.1 (Act 628 – HB 241), which added criminal penalties to the existing statutes which prohibit insurance producers, brokers, insurers, policyholders, or certificate holders from knowingly issuing a certificate of insurance, auto ID card or other evidence of insurance which does not accurately reflect the underlying insurance policies. Penalties included a maximum fine of \$5,000 and/or 5 years in prison. Subsequently, the Louisiana Department of Insurance issued Bulletin 09-02, which clarified the law on certificates of insurance, auto ID cards and other evidences of insurance to help educate agents and the public, and in particular, to help agents avoid unintentionally violating the statutes.

In Louisiana, the 2009 Legislature passed 22.881.1 (Act 335 – HB 623), which was effective August 15, 2009. (Note: 22.881.1 was later revised and redesignated as 22:890 in 2010.) Among other things, Act 335 reaffirms the existing statutory prohibitions against issuing certificates of insurance to amend the provisions of the underlying insurance policies. In addition, Act 335 limits the types of certificates that can be used by insurers and producers to “*only the standard ACORD or ISO Form ‘Certificate of Insurance’ or other form filed with and approved by the commissioner of insurance.*” For details on Act 335, see [IIABL Technical Advisory #274](#).

In addition to legislative action, the insurance industry has taken action to limit the breadth and scope of certificates of insurance. In September 1, 2009 ACORD made major changes to the ACORD 24 and ACORD 25 certificate of insurance forms. Effective one year later, September 1, 2010, ACORD withdrew authority to use the previous editions of these forms and made the 9/1/2010 ACORD forms the de facto standard in the industry. To add to the confusion, ACORD issued another new ACORD 25 form effective May 2010. One of the biggest changes in these ACORD COI forms was the elimination of the long standard notice of cancellation provision. For many years, certificates of insurance were incorrectly issued with a 30 day notice of cancellation to the certificate holder. Unless the certificate holder is a lienholder with rights under the lienholder provisions of the policy, the underlying contracts of insurance generally do not give the certificate holder any right to a notice of cancellation, and therefore the certificate of insurance should not include a notice of cancellation. For additional information on these changes, see [IIABL Technical Advisory #284](#).

Most recently, certificates of insurance were the subject of additional legislative activity in 2010. The Legislature passed Act 1017 (HB 447), which revised 22:881.1 passed in the 2009 Session as Act 335. (Note: 22.881.1 was later revised and redesignated as 22:890 in 2010.) Act 1017 requires certificate of insurance forms to be reviewed and approved by the commissioner of insurance in the same way that current law requires many other insurance forms to be reviewed and approved. This insures that these forms accurately and appropriately describe insurance coverages in compliance with

Louisiana law. The new law also reaffirms the requirement that certificates of insurance accurately reflect the underlying policies. Act 1017 is particularly important because it applies to certificate holders and policyholders in addition to insurance producers and insurance companies, and subjects all parties to a fine up to \$1000 per violation. The new law becomes effective January 1, 2011.

In very simple terms, Act 1017 centers around two fundamental requirements which may serve as guiding principles for compliance. First, all certificate of insurance forms must be approved by the Louisiana Department of Insurance before they may be used, and once approved, the form itself may not be altered without additional approval. Second, all approved certificate of insurance forms which are issued must accurately reflect the underlying insurance policies, and may not include provisions unless they are found in the insurance contracts. Of course, the devil is in the details...

In preparation for the implementation of Act 1017, the Louisiana Department of Insurance has promulgated DRAFT Regulation 99. Please note that this is a **DRAFT** version of Regulation 99 which is promulgated in compliance with the Louisiana Administrative Procedures Act and is subject to legislative oversight and possible revision. IIABL does not normally publish LDI regulations until they are final. However, the waiting periods required by the Administrative Procedures Act will not allow DRAFT Regulation 99 to be finalized until December 20, 2010, which will only provide IIABL members with 10 days notice (during the holidays) to educate themselves and develop procedures for compliance with Act 1017. Therefore, IIABL is providing our members with DRAFT Regulation 99 at this time, and will publish the final Regulation 99 as soon as it is available.

DRAFT Regulation 99 provides important details on implementation of the new law that are not included in Act 1017, including information on the following points of interest:

- Scope, applicability, and exemptions from the law
- Requirements for approval of certificates of insurance forms
- Details on the filing requirements and procedures for approval of certificate forms
- Provisions for LDI approval numbers, edition dates & posting on the LDI website
- Limitations on notice of cancellation on certificates of insurance
- Authorization for investigations of complaints and fines for violations

Necessary Action: It is very important that all agency personnel who deal with certificates of insurance read Act 1017 (attached) and DRAFT Regulation 99 (attached) in careful detail so that they are clear on how to comply with the new law effective January 1, 2011. Agency management should also develop new procedures for issuance of certificates of insurance in order to comply with the new law.