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TECHNICAL ADVISORY

TA 326

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SUBJECT: 2016 Changes to Certificates of Insurance Statute

BACKGROUND: Significant changes were made to R.S. 22:890, the Certificates of Insurance statute during the 2016 Regular Session of the Louisiana Legislature. [HB 476 Act 278](#) was introduced by Representative Mike Huval, an independent insurance agent and longtime member of IIABL, to eliminate demands by some certificate holders for producers to provide interpretations of policy language and comprehensive summaries of insurance policy coverages on certificate holder mandated certificate of insurance forms.

In recent years, many certificate holders have developed their own certificate of insurance forms which require insurance producers to interpret insurance coverages and provide a comprehensive summary of coverages provided by the underlying insurance policies. Certificates of insurance were never meant to provide such comprehensive summaries of coverage...only the actual insurance policies can provide details of coverage.

Some certificate holders have tried to use their own custom certificate of insurance forms as a risk management tool to transfer their own risk to their subcontractors, or to insure themselves under their subcontractors' insurance program. Certain certificate holders have also used their certificate of insurance forms to try to transfer liability to the insurance producer completing the form.

Some certificate holders use their economic leverage over their subcontractors to demand completion of certificate of insurance forms which are not appropriate from the perspective of the insurance producer and the underwriting insurance companies. Such unreasonable demands have created significant errors & omissions claims against insurance agents from both certificate holders and insurance companies. HB 476 Act 278 was introduced by Representative Mike Huval to eliminate these problems, by requiring the use of insurance industry certificate of insurance forms.

MAIN POINTS: Please refer to the actual text of [HB 476 Act 278](#) for details on the new provisions of R.S. 22:890 Certificates of Insurance. This summary is not a legal interpretation of the statute, and is only intended to provide a broad overview to educate IIABL members, their customers, and certificate holders about HB 476 Act 278. Please obtain a legal opinion from a qualified attorney if you have questions or concerns about the certificates of insurance statutes.

Most of the R.S. 22:890 remains unchanged. This summary will only deal with the new changes to the law, except that it is important to note that the statute still requires that a certificate of insurance accurately reflect the underlying insurance policies, and prohibits any language on a certificate of insurance that does not precisely reflect coverage provided by the insurance policies.

The first major change in the law is the inclusion of a new definition for the term “lender” in R.S. 22:890.A.(7). The definition of “lender” is unremarkable and includes those who makes, owns, or services loans. The significance of the definition is that throughout the other changes in the statutes, “lenders” are excluded from the changes. As outlined below, the result is that “lenders” may still require the use of their own specific certificate of insurance form.

The most significant change in [HB 476 Act 278](#) is in section R.S. 22:890.C. which now reads:

C. No person, other than a lender, wherever located may prepare, issue or request the issuance of a certificate of insurance for risks located in this state unless the certificate is issued on standard certificate of insurance forms promulgated by the insurer, the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO).

This provision is very straightforward: certificates of insurance may only be issued on forms promulgated by the insurance industry. Certificate holders may not demand, and insurance producers and insurance companies may not issue certificates of insurance forms created by the certificate holder, unless that certificate holder is a lender. The practical application of this provision is that the overwhelming majority of certificates will be issued on standard industry ACORD forms.

Insurance producers may complete the ACORD form with any appropriate information which accurately reflects the coverages (and exclusions) provided by the underlying insurance policies. The certificates of insurance statutes continue to authorize an insurance producer or insurance company to use an addendum to an ACORD certificate to clarify coverage provided by the insurance policies. With the permission of the policyholder, insurance producers may also provide copies of policies as proof of insurance coverage in order to provide coverage details without providing interpretations of policy provisions or detailed summaries of insurance coverages.

Subsections R.S. 22:890.D. through R.S. 22:890.F. of the previous law have been deleted. These sections gave the commissioner of insurance authority to approve certificate of insurance forms. The commissioner no longer has authority to approve certificate forms. Only the forms specified in R.S. 22:890.C. may be used. The commissioner is notifying certificate holders who had certificate forms approved that as of August 1, 2016, their forms are no longer approved and may not be used.

The last significant provision of HB 476 Act 278 is revision of R.S. 22:890.H. which now reads:

H. No certificate of insurance shall contain references to legal or insurance requirements contained in any contracts, including but not limited to construction or service contracts. The certificate of insurance may list only the specific forms or endorsements contained in the underlying contracts of insurance. No certificate holder or other interested party may require an interpretation of those forms or endorsements from the insurance agent. The provisions of the Subsection shall not apply to lenders, as defined in this Section, or to certificates of insurance required or requested by a lender from a policyholder.

This subsection provides additional clarification that an insurance producer may provide specific information about forms and endorsements, but may not be required to provide interpretation of those forms or endorsements.

There is additional language in the bill which makes other provisions compatible with the changes outlined above.

[HB 476 Act 278](#) is effective August 1, 2016.

A copy of HB 476 Act 278 can be found [HERE](#).

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