

**PROGRAM DIVISION  
BULLETIN**

2008-11

April 18, 2008

**OKLAHOMA: *Unfair Trade Practices***

**Clarification Regarding the Proper Use of Certificates of Insurance By Producers and Insurers**

On March 13, 2008, the Oklahoma Insurance Department (the "Department") issued Bulletin No. PC 2008-01, concerning certificates of insurance. The purpose of the Bulletin is to clarify the use of certificates of insurance by producers or insurers in Oklahoma.

**Background**

The Bulletin explains that the Department is aware that some insurance producers or insurers have been asked to sign and issue preprinted certificate of insurance forms which include language that attempts to affirmatively or negatively amend, extend or alter the coverage of the underlying policy. Certificates of insurance are typically used to serve as proof of liability insurance and to summarize the terms of the policy in lieu of providing a full copy of the policy.

Section 3602 of Title 36 of the Oklahoma Statutes defines "policy" to mean "a contract of or agreement for effecting insurance, or the certificate thereof (emphasis added)." Section 3610 of Title 36, Okla. Stat., requires insurers to file policies intended for use in Oklahoma with the Department for review and approval before the policy is used in Oklahoma. Section 3610 does not exempt a certificate of coverage from filing on the basis that it is not a part of the policy; while § 3610 exempts from filing those applications that the insurer does not require to be in writing or made a part of the policy, that exclusion is limited to applications meeting the requirements of the subordinate clause immediately following the words "or application form."

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### Potential Insurance Code Violations

The Bulletin explains that certificates of insurance must clearly and accurately state the insurance coverage provided. Any certificate of insurance issued by an insurer or producer that obscures or misrepresents the insurance coverage provided under the insurance policy is a violation of the Oklahoma Insurance Code and may subject the issuer to administrative penalties and/or license suspension or revocation.

Accordingly, when an insurer or insurance producer acting as the insurer's agent executes a certificate of insurance or other evidence of coverage which goes beyond a mere synopsis of the policy, the insurer or producer may be exceeding the policy language filed with and approved by the Department. If an insurer or its producer includes any statement in the certificate of insurance, the purpose of which is to amend or extend coverage under the underlying policy, including references to construction contracts, service contracts or insurance requirements, the insurer or producer is, in effect, changing the policy terms. By issuing such a certificate, the insurer or producer is in violation of the Oklahoma Insurance Code.

### Disclosure Statement

To ensure that consumers as well as third parties requesting a certificate of insurance are aware that the certificate does not expand or restrict coverage, an insurer or producer should include on the certificate a statement such as, "This certificate or memorandum of insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by policy number \_\_\_\_\_ issued by \_\_\_\_\_ on \_\_\_\_\_."

### Penalties

Section 1435.13(A)(5) of Title 36, Okla. Stat., authorizes the Insurance Commissioner to place on probation, censure, suspend or revoke a producer's license if the producer intentionally misrepresents the terms of an actual or proposed insurance contract. A producer who signs a certificate of insurance or issues an opinion that the producer knows alters or amends the coverages of the underlying policy, may be in violation of this section and thereby be subject to appropriate penalties under the Code. It should also be noted that reliance upon a certificate of insurance in support of a claim against the underlying policy can raise an issue of criminal fraud. Thus, insureds should be wary of certificates of insurance not issued directly by the insurer or the insurer's agent or those not issued on a form approved by the Department.

### Special Provisions

If an insured wants special insurance provisions, the insured's insurance agent should request that the insurer write an insurance policy which contains those

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special provisions. Whether this is done through a policy endorsement or through an individual risk policy will depend on the situation. If and only if the policy contains such special provisions may the insurance agent properly insert an accurate statement of the special policy provisions in the special provisions block of the certificate of insurance.

Please contact your Program Manager with any questions.

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