

## **Certificates of Insurance**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Office of Insurance on the specified issue. The Advisory Opinion is not legally binding on either the Office of Insurance or the reader.

### **Kentucky Office of Insurance Advisory Opinion 2004-03**

#### **Regarding: Certificates of Insurance**

RELEVANT FACTS AND STATUTES: Questions persist regarding altered certificates of insurance that do not accurately reflect the actual coverage provided by the identified policy contracts. There seems to be a continuing misunderstanding by agents and insurers in the Commonwealth on this subject.

The purpose of this Advisory Opinion is to remind insurers and agents of Kentucky law and to clarify the position of the Office of Insurance.

A certificate of insurance is an informational document that provides evidence of insurance in lieu of an actual copy of the identified policy of insurance at the time the certificate is issued. A certificate confers no rights upon the certificate holder that do not exist in the policy contract.

806 KAR 14:100 states: "Sec. 1. Each certificate or memorandum of property or casualty insurance when issued to any person other than the policyholder shall contain the following or similar statement: "This certificate or memorandum of insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by policy number \_\_\_\_ issued by \_\_\_\_". Section 2. Prior to its use, each insurer shall file with the commissioner the form of certificate or memorandum of insurance which will be used by such company."

Agents and insurers who use Certificate of Insurance forms which have not been filed and approved are in violation of 806 KAR 14:100.

Most insurers utilize, or permit their agents to use, certificate of insurance forms printed by ACORD or ISO which have been filed with the Kentucky Office of Insurance. Insurers may file to adopt these forms by reference pursuant to 806 KAR 14:006. Or insurers may develop and file their own certificate of insurance forms. .

It is contrary to law for an agent or insurer to issue, or permit to be issued, a certificate of insurance in a form not previously filed by the insurer and approved by the Office of Insurance or that contains terms or conditions that differ from those in the underlying policy.

KRS 304.14-120(1) provides "No basic insurance policy or annuity contract form, ...or printed rider or indorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with and approved by the commissioner."

KRS 304.12-020 provides in part "No person shall make or disseminate orally or in other manner any advertisement, information, matter, statement, or thing: (1) Misrepresenting the terms of any policy..."

The law provides the following penalties for agents and insurers who engage in the practice of altering certificates of insurance:

KRS 304.9-440(1) provides the commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twelve (12) months, revoke, or refuse to issue or renew any license or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes: (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner; (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, viatical settlement contract, or application for insurance;

KRS 304.3-200 provides: (1) The commissioner may, in his discretion, refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has: ... (b) Willfully violated or willfully failed to comply with any lawful regulation of the commissioner; or (c) Willfully violated any provision of this code other than those for violation of which suspension or revocation is mandatory. ...In lieu of or in addition to such suspension or revocation, the commissioner may, in his discretion, reprimand the insurer, which shall be made a part of the insurer's record, or may levy upon the insurer, and the insurer shall pay forthwith, an administrative fine as specified in KRS 304.99-020. (2) The commissioner shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if he finds after a hearing thereon that the insurer: ...(e) Has actual knowledge by the chief executive officer or person in charge of Kentucky operations that an agent employed by the insurer has engaged or is engaging in conduct in violation of this code and the insurer has failed to report such conduct to the department.

POSITION OF THE OFFICE OF INSURANCE: The Office of Insurance will not attempt to enforce the coverage provided in an altered certificate as the plain language of 806 KAR 14:100 and the certificate state that a certificate can neither amend, extend, nor alter the coverage afforded by the policy.

The Office of Insurance stands ready to investigate and take appropriate administrative action should altered certificates be brought to our attention.

Questions regarding this Advisory Opinion may be directed to Robin Coombs, Assistant Director, Property & Casualty Division, at (502) 564-3630 ext. 4294, or to Pam Farmer, Office of Legal Services, at (502) 564-6032.

/s/ Marin J. Koettters

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Date