



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

**ADVISORY OPINION
2011-02**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL PROPERTY AND CASUALTY INSURERS AND AGENTS
AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN
KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

DATE: APRIL 21, 2011

RE: CERTIFICATES OF INSURANCE
RESTATEMENT OF ADVISORY OPINION 2004-03

Recent inquiries to the Department indicate that there continues to be confusion in the insurance industry among producers and insurers as to the use of approved forms and whether approved forms may be altered after approval. Of particular concern is the practice of altering certificates of insurance or other insurance forms after the certificates/forms have been filed with and approved by the Department. This Advisory Opinion restates the Department’s position as outlined in Advisory Opinion 2004-03 and serves to remind insurers and insurance producers of the certificate/form approval requirements in the Kentucky Insurance Code.

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.

KRS 304.14-120 provides that no basic insurance policy or application form where written application is required and is to be made a part of the policy or contract, 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. 806 KAR 14:006 Section 6(1) further provides that a policy or form shall not be used in Kentucky until it has been approved.

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.”

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 Department of Insurance. Insurers may file to adopt these forms by reference pursuant to 806 KAR 14:006. In the alternative, 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 Department of Insurance or that contains terms or conditions that differ from those in the underlying policy. This practice not only violates KRS 304.14-120, 806 KAR 14:006, and 806 KAR 14:100, but it is also violates KRS 304.12-020 which prohibits persons from making or disseminating orally or in any other manner any advertisement, information matter, statement or thing misrepresenting the terms of any policy.

KRS 304.14-120(1) provides that form filing requirements shall not apply to “forms of unique character designed for and used with relation to insurance upon a particular subject...” Please be advised that most forms are not of such unique character as to allow their use without Department approval. Consequently, insurers and agents should rely on this statutory provision only in rare situations where a risk is so unique so as to require forms that would only be used once. This provision should never be relied upon by an insurer or an agent to alter a certificate of insurance in a manner that is different than a policy contract.

Please note that the Department 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 Department of Insurance will investigate and take appropriate administrative action should the Department determine that a certificate of insurance has been illegally altered. 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.

Questions regarding this Advisory Opinion may be directed to the Property & Casualty Division at (502) 564-6046.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 21st day of April, 2011