

# Best Practices *for* CERTIFICATES *of* INSURANCE



JANUARY 2012

REVISED APRIL 2013

A publication of  
Independent Insurance Agents of Texas

© 2012, 2013  
P.O. Box 684487  
Austin, Texas 78768  
800.880.7428 • fax 512.469.9512  
[iiat.org](http://iiat.org)

# Table of Contents

	PAGE
Acknowledgements _____	1
Introduction _____	3
Senate Bill 425 _____	4
TDI Rules Implementing Senate Bill 425 _____	8
Certificates of Insurance – Problems and Solutions _____	9
General Recommendations of the Task Force _____	10
Standard ACORD Certificate of Liability Insurance _____	11
Non-Standard Certificates of Insurance and Questionnaires _____	32
Additional Insureds _____	34
Contractual Liability _____	41
Waiver of Subrogation _____	43
Notice of Cancellation to Certificate Holders _____	47
The Box _____	50
Sending Certificates to Companies _____	52
Reviewing Contracts for Insureds _____	53
Automated Certificate Systems _____	55
Certificates on Policies Written Through Wholesalers _____	57
Charging Fees for Certificates _____	60
Appendix _____	A-1

# Acknowledgments

IIAT expresses its appreciation to the following members of the 2011-2012 IIAT Task Force on Certificates of Insurance who contributed their time and thoughts to this project.

<b>Diannah Tatum, CIC (Chair)</b> <b>Sanford &amp; Tatum Insurance Agency</b> <b>Lubbock</b>	<b>Diann Eisenhauer, ACSR, CIC</b> <b>Swantner and Gordon Insurance</b> <b>Agency, LLC</b> <b>Corpus Christi</b>
<b>Lynda Gilmore, ACSR, AAI</b> <b>McQueary Henry Bowles Troy, LLP</b> <b>Dallas</b>	<b>Gina O'Hara, CRIS</b> <b>Anco Insurance Services of Austin</b> <b>Austin</b>
<b>Delbert Gault, CPCU</b> <b>Grimes Insurance Agency, Inc.</b> <b>Lubbock</b>	<b>Scott Bruner, CPCU, RPLU, ARM</b> <b>Offenhauser &amp; Company</b> <b>Texarkana</b>
<b>Tim McClendon, CIC, CWCA</b> <b>Hertel McClendon, LLP</b> <b>Fort Worth</b>	<b>Ralph Howard, CIC</b> <b>Dean &amp; Draper Insurance Agency,</b> <b>LP</b> <b>Houston</b>
<b>Sharon Nail, CIC</b> <b>Brady, Chapman, Holland &amp;</b> <b>Associates, Inc.</b> <b>Houston</b>	<b>Don Whitaker</b> <b>Whitaker Insurance Associates, Inc.</b> <b>San Antonio</b>
<b>Ron Walker, CPCU, CIC</b> <b>Texas American Insurers, Inc.</b> <b>Fort Worth</b>	<b>Dan Hamilton, CIC, CRM</b> <b>Bogan, Dunlap &amp; Wood Ins Agency,</b> <b>LLC</b> <b>Odessa</b>
<b>David Surles, CPCU, AAI, RPLU</b> <b>IIAT Staff Liaison</b> <b>Austin</b>	

# April 2013

## Summary of Revisions to January 2012 Edition

Page #	Explanation of Change(s)
3	Added comment regarding the primary purpose of the April 2013 Revision.
4	Added reference to TDI rules approved April 2013.
5	Added exception to the law and rules. They are not applicable to a certificate form pertaining to a nonadmitted (surplus lines) insurance policy sold to, solicited by or negotiated with an insured whose home state is not Texas.
6	Moved text to accommodate additions on previous pages. (no changes)
7	Moved text to accommodate additions on previous pages. Added complaint filing information with current addresses.
8	Added information regarding TDI-approved rules, including restrictions on the content of certificates. Added web address for viewing TDI-approved certificates.
11	Changed web address for the ACORD Advantage program.
13 – 14	Revised to reflect current ACORD Form Instruction Guide.
19	Added check-boxes under "Type of Insurance."
28	Revised to reflect current ACORD Form Instruction Guide.
31	Revised to reflect current ACORD Form Instruction Guide.
33	Added TDI web address for information regarding filing certificates for approval.
34 – 40	Changed additional insured endorsement references and language to current editions of various additional insured endorsements. Added section regarding special Texas additional insured endorsements. Removed reference to endorsement CA 04 03 (withdrawn by ISO). Added reference to ISO "primary and non-contributory" endorsement CG 20 01 introduced in 2013 edition changes. Added reference to company-specific "primary and non-contributory" endorsements on the BAP.
41 – 42	Added reference to Texas-special contractual liability endorsement CG 33 90.
44	Changed ISO BAP endorsement for waiver of subrogation from CA 20 89 (withdrawn) to CA 04 44.
47	Added note regarding withdrawal of ISO BAP endorsement CA 02 44. Added reference to Texas BAP endorsement TE 99 01.
50	Added information regarding TDI-approved rules, including restrictions on the content of certificates.
51	Added TDI web address for information regarding certificates of insurance.
58	Revised to reflect current ACORD Form Instruction Guide.
59	Indented 4 recommendations under paragraph 4.
Appendix	Added rules. Renumbered pages.

# INTRODUCTION

## CERTIFICATE OF INSURANCE

A document issued by or on behalf of an insurance company to a third party who has not contracted with the insurer to purchase an insurance policy. The most common type of certificate is that provided for informational purposes to advise a third party of the existence and amount of insurance issued to the named insured.” (Allan D. Windt, *Insurance Claims and Disputes*, 4th ed., 2001)

The processing of requests for certificates of insurance is arguably the most troublesome task performed by insurance agencies today. The task can be time-consuming and labor-intensive. If not handled properly, the process can create significant E&O exposures for the agency. And in most agencies, even those that issue thousands of certificates each year, the job is done without additional compensation.

Certificate holders often request special wording or unique forms as evidence of insurance. When an agent or CSR prepares a special certificate form or uses special wording, the actual coverage provided by the policy may be misrepresented or obscured – either accidentally or intentionally.

Customers or certificate holders often want a certificate of insurance “yesterday.”

An agent is caught between a rock – the desire to serve the client – and a hard place – the need to follow procedures designed to avoid liability, as well as laws and regulations regarding certificates of insurance.

This dilemma must be resolved in a way that minimizes E&O exposures and complies with laws and regulations, while allowing a client to maintain business relationships.

With these issues in mind, the board of directors of the Independent Insurance Agents of Texas authorized formation of a Task Force on Certificates of Insurance in March 2006. The task force was charged with addressing problems encountered by independent agents and their customers with the use of certificates of insurance.

The 2007 edition of “Best Practices for Certificates of Insurance” and the 2010 update of that publication were the result of recommendations put forth by members of the 2006 Task Force and IIAT staff.

In 2010 the IIAT Board of Directors decided the time was right to follow the lead of other Big “I” state associations that had successfully promoted laws to regulate certificates of insurance. The result was Senate Bill 425, passed by the legislature in 2011 with major provisions going into effect on January 1, 2012. The IIAT Board of Directors appointed a new Task Force on Certificates of Insurance to monitor implementation of the law and advise IIAT staff on member communications regarding the law. The January 2012 edition of “Best Practices for Certificates of Insurance” was published with guidance from Task Force members to help independent insurance agents understand and comply with Senate Bill 425.

The publication was revised in April 2013 to reflect new rules approved by the Texas Department of Insurance to implement the law.

# SENATE BILL 425

Prior to passage of Senate Bill 425 in 2011, there was no specific law in Texas that regulated certificates of insurance. Instead, agents were guided by Commissioner's Bulletin No. B-0035-06 issued on September 8, 2006, by the Texas Department of Insurance. (See **Appendix** to read the bulletin.) In this bulletin, the Commissioner reminded insurers and agents that a certificate of insurance must clearly and accurately state the insurance coverage provided. The Bulletin referred to general trade practice laws that apply to an agent who obscures or misrepresents insurance coverage or alters the terms or conditions of a policy.

In 2010 the IIAT Board of Directors decided the time was right to follow the lead of other Big "I" state associations that had successfully promoted laws to regulate certificates of insurance.

The result was Senate Bill 425, codified in the Texas Insurance Code, Title 10, Subtitle A, Chapter 1811. The law was passed by the Texas legislature and signed into law by Governor Rick Perry in 2011. The major provisions of the law became effective January 1, 2012.

The Texas Department of Insurance developed and passed rules to implement the law in April 2013. The rules are codified in the Texas Administrative Code, Title 28, Subchapter M, Division 11, Sections 5.9370 – 5.9376.

The complete text of Senate Bill 425 and the rules developed and passed by the Texas Department of Insurance to implement the law are reproduced in the **Appendix**.

## Overview of Senate Bill 425

The operative provisions of Senate Bill 425 went into effect on January 1, 2012. The law codifies the requirements specified in the Commissioner's Bulletin and then goes much further with the following key provisions:

- Defines "certificates of insurance" and describes the types of documents that are regulated.
- Requires the Texas Department of Insurance to accept filings for and approve certificates of insurance to be used for risks located in the state. ACORD and other standard forms must be filed with TDI but are deemed approved on the date the forms are filed.
- Prohibits agents and insurers from issuing a certificate of insurance or any similar document unless the form has been filed with and approved by TDI.
- Prohibits agents and insurers from issuing a certificate or similar document that alters, amends or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.
- Prohibits certificate holders from requiring an agent or insurer or policyholder to issue a certificate or document that has not been approved by TDI or that contains any false or misleading information concerning the insurance policy to which it refers.

- Gives TDI the power to investigate complaints and allegations of specific violations of the law, and requires insurers, agents, policyholders, or certificate holders to immediately provide information requested by TDI.
- Gives TDI the power to enforce violations of the law and regulations against agents and insurers by issuing a cease and desist order, seeking an injunction, or imposing fines up to \$1,000 for each violation and other penalties including license revocation.
- Gives the Commissioner of Insurance the power to enforce violations of the law against certificate holders by asking the attorney general to bring a civil suit for injunctive relief to restrain a person from continuing a violation or threat of violation, or to recover a civil penalty of up to \$1,000 for each violation.

## **Definition of Certificate of Insurance**

A certificate of insurance is defined in the law as a document (including an electronic record) that is executed by an insurer or agent and issued to a third party as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form.

## **Applicability of the Law**

The law **applies to** certificates of insurance issued on property or casualty operations or a risk located in Texas, regardless of where the certificate holder, policyholder, insurer, or agent is located. Under the TDI rules approved in March 2013, however, the law and rules do not apply to a certificate form pertaining to a nonadmitted (surplus lines) insurance policy sold to, solicited by or negotiated with an insured whose home state is not Texas. “Home state” means the state in which an insured maintains its residence or principal place of business.

(Note: If a Texas agent issues a certificate of insurance on operations or a risk located in another state, that state may have its own law regulating certificates of insurance. You can find a complete list of state laws and regulations on the in the Certificates section of the IIABA Virtual University website.)

The law **does not apply to** evidence of property insurance required by a lender, certificates issued under group or individual life or health insurance policies, or standard proof of motor vehicle liability insurance.

## **Prohibitions in the Law Applicable to Agents and Insurers**

Under the law, agents and insurers **may not**:

- Issue a certificate (see the definition of certificate above) unless the form has been filed with and approved by TDI.
- Alter or modify a certificate form approved by TDI unless the alteration or modification is approved by TDI.
- Issue a certificate that alters, amends or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate.
- Issue a certificate that contains a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance or endorsement to the insurance policy.

## **Prohibition in the Law Applicable to Certificate Holders and Others**

Under the law, certificate holders and others **may not**:

- Require the issuance of a certificate unless the form has been filed with and approved by TDI.
- Require the issuance of a certificate from an insurer, agent or policyholder that contains any false or misleading information concerning the insurance policy to which the certificate refers.
- Require an agent or insurer, either in addition to or in lieu of an approved certificate form, to issue any other document or correspondence that is inconsistent with the law.

## **Certificate Filing and Approval Requirements**

The law contains specific requirements for certificates and forms filed for TDI approval, including:

- An ACORD form or standard certificate form promulgated by ISO or AAIS must be filed but is deemed approved on the date the form is filed.
- The form must contain the phrase “for information purposes only” or similar language. If the form does not contain that phrase, TDI may approve the form if the form states that the form does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced in the form, and that the terms of the policy control over the terms of the certificate.
- A filed form is deemed approved 60 days after the date the form is filed unless TDI approves or disapproves the form during the 60-day period. TDI may extend by not more than 10 days the 60-day period.

- TDI must disapprove a form or withdraw approval of a form if the form:
  1. contains a misleading or deceptive provision, title or heading,
  2. violates public policy,
  3. violates state law,
  4. requires an agent or insurer to certify insurance coverage that is not available in the line or type of insurance coverage referenced in the form, or
  5. requires TDI to make a coverage determination.

## **Effect of Approved Form**

The law contains the following statements regarding the effect of approved forms:

- A certificate is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.
- A certificate shall not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides.
- A person may have a legal right to notice of cancellation, nonrenewal or material change or any similar notice only if (1) the person is named within the policy or an endorsement to the policy, and (2) the policy or endorsement, or a state law or rule, requires notice to be provided.

## **Fair Warning to Certificate Holders**

The law makes the following statement regarding certificates issued in violation of the law:

**“A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect.”**

## **Filing a Complaint**

Agents and policyholders can file complaints regarding noncompliant certificates of insurance with the Texas Department of Insurance:

Texas Department of Insurance  
P&C Intake Unit, Mail Code 104-3B  
P.O. Box 149104  
Austin, Texas 78714-9104  
FAX: 512.490.1016

# TDI RULES IMPLEMENTING SENATE BILL 425

The Texas Department of Insurance developed and approved rules to implement Senate Bill 425 in March 2013. The rules are codified in the Texas Administrative Code, Title 28, Subchapter M, Division 11, Sections 5.9370 – 5.9376. The complete text of the approved rules is reproduced in the **Appendix**.

## Restrictions on the Content of Certificates

The rules clarify the law with regard to information that may be contained in a filed certificate of insurance or required when requesting a certificate of insurance.

A certificate may not contain false or misleading information concerning the referenced insurance policy.

- Requests for information on the certificate from must be specific, clear and reasonable
- Any explanatory information included in a completed certificate is limited to language in the referenced policy and any executed endorsements.

A certificate may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

- A certificate may refer to the language in the underlying contract of insurance.
- A certificate may not refer to, describe, explain or define obligations under a contract other than the underlying contract of insurance.

A certificate may not alter the terms and conditions of a right to notice of cancellation, nonrenewal or material change or any similar notice concerning a policy of insurance required by the insurance policy or Texas law.

- A certificate may not create a new or additional duty to notify.
- Any statement on a certificate regarding an existing duty to notify is limited to language in the referenced policy and any executed endorsements.

## Filing Certificates for Approval

Certificate forms can be filed with TDI for approval by mailing the form and required transmittal information to:

Texas Department of Insurance  
P&C Intake, Mail Code 104-3B  
PO Box 149104  
Austin, TX 78714

## Approved Certificates of Insurance

When the Texas Department of Insurance approves a certificate of insurance, the form is available for viewing on the website at <http://www.tdi.texas.gov/certificates/listing.html>.

# **CERTIFICATES OF INSURANCE – PROBLEMS AND SOLUTIONS**

As provided in Senate Bill 425, certificates of insurance must include a statement making it clear the certificate is issued for information purposes only and does not change the coverage provided by the policy. While this statement generally protects the insurance company from incurring liability when a certificate contains incorrect information, it may not protect an insurance agency when an employee of the agency makes an error on a certificate.

Numerous claims handled by the IIAT E&O program highlight the danger to an agency when an agency principal or employee doesn't follow proper procedures and issues an incorrect certificate – and the new law doesn't help at all.

## **The Problem with Certificates**

There are two primary reasons E&O claims arise out of certificates of insurance issued by an agency:

1. Producers and CSRs can be under intense pressure to issue certificates that satisfy a customer's demand to get a job or get paid for a job. As a result, they intentionally issue certificates that reflect or imply non-existent coverages or other provisions. Such acts are clearly against the law and can subject the agency to significant administrative penalties, including fines and revocation of the individual or agency license. In addition, E&O policies may exclude claims involving intentional acts in violation of the law, if the carrier can prove that a producer or CSR intentionally produced an erroneous certificate.
2. Producers and CSRs mistakenly issue certificates that reflect or imply non-existent coverages or other provisions because they are not familiar enough with the certificate holder's requirements or the actual policy coverages. Even these unintentional acts may subject the agency to penalties under the law.

## **The Solutions to the Problem**

There are several steps an agency can take to avoid or reduce the possibility of E&O claims involving certificates of insurance.

- Agency managers must gain control of the certificates of insurance issued by agency personnel.
- Agency managers must develop and implement procedures to ensure that certificates are checked and double-checked for accuracy and compliance with the law before they leave the office.
- Agency managers must educate policyholders and certificate holders that certificates of insurance issued by the agency must comply with the law and cannot always satisfy the certificate holder's requests.
- By implementing the recommendations of the IIAT Task Force and using the tools and sample wording described in this publication, agency managers can begin to gain control of the certificate process and avoid costly errors and omissions claims against the agency.

# GENERAL RECOMMENDATIONS OF THE TASK FORCE

The following general recommendations for handling certificates, and the recommendations for specific processes involving certificates found in other sections of this publication, were put forth by members of the IIAT task force.

Task force members were not unanimous in their endorsement of these recommendations, but there was consensus that the recommendations should be considered by IIAT members when establishing procedures for handling certificates of insurance.

## TASK FORCE RECOMMENDATIONS – GENERAL

1. Establish written procedures for agency staff to follow when processing certificates of insurance. See Guide to E&O Loss Control at [www.iiat.org](http://www.iiat.org) for sample procedures.
2. Perform a self-audit on your agency's certificate handling procedures. See Guide to E&O Loss Control at [www.iiat.org](http://www.iiat.org) for a sample self-audit.
3. Follow the ACORD Forms Instruction Guide when preparing ACORD certificates.
4. Follow the Task Force recommendations found in other sections of this publication.
5. Do not add words or phrases on the certificate that reflect or imply coverages or conditions not explicitly granted by the policies.
6. Do not alter wording on an ACORD or other printed certificate form.
7. Follow insurance company guidelines and your authority regarding certificates.
8. Document who requested the certificate and what was requested. If requested by a certificate holder, obtained the insured's permission before issuing certificate.
9. Require CSRs and producers to use a checklist when processing a request for a certificate. See Appendix for a sample checklist.
10. Designate one (or more) technically proficient person(s) to double-check each certificate before it is delivered.

# STANDARD ACORD CERTIFICATE OF LIABILITY INSURANCE

The most commonly used certificate of insurance for liability insurance is the ACORD 25 (2010/05), published and distributed by the ACORD Corporation.

The May 2010 edition (2010/05) is approved by the Texas Department of Insurance under provisions of Senate Bill 425 and is the edition that must be used until a new form is introduced and approved.

ACORD (short for Association for Cooperative Operations Research and Development) was established in 1970 to facilitate the development and use of standards for the insurance industry. The first standard forms were released in 1972 for use by the industry.

In addition to the actual forms, ACORD publishes a Forms Instruction Guide.

If your agency uses ACORD forms, you should subscribe to the ACORD Agency Advantage program. Your subscription provides access to the most recent editions of all ACORD forms, including “fillable” forms, as well as the Forms Instruction Guide. In addition, the subscription includes access to studies, tools and newsletters published by AUGIE – the ACORD User Groups Information Exchange. ACORD Advantage membership entitles all employees at your location with 12 months of services and products for a flat annual fee, and there is a special rate for members of IIAT and IIABA. For more information, go to the ACORD website at [www.acord.org/standards/forms/advantage/Pages/default.aspx](http://www.acord.org/standards/forms/advantage/Pages/default.aspx).

A sample ACORD 25 (2010/05) is reproduced on the next page, followed by discussion of each section. Within the discussion of each section, we have summarized the ACORD Forms Instruction Guide and the task force recommendations for Best Practices for that section of the ACORD 25.

Following the form section explanations, we have included topics to assist agents in preparing certificates that comply with Senate Bill 425 and TDI rules, including sample wording to make specific disclosures to the certificate holder.



# ACORD 25 – CERTIFICATE OF LIABILITY INSURANCE

## ACORD Forms Instruction Guide

**ACORD 25, Certificate of Liability Insurance, 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 policies”.**

The above information is included in the opening statement of the form.

If the receiver of the form wants to verify that liability coverage exists on a policy and has no direct interest in the policy, use the certificate of insurance. However, if the receiver of the form does have a verifiable interest in the policy, such as an additional insured, the liability policy must be amended by endorsement, to provide the appropriate coverage for the interested party prior to issuing a certificate of insurance (since the certificate confers no rights upon the holder and does not amend the policy).

ACORD 25 was designed to collect policy limit information based on the ISO commercial lines program. It addresses both Claims Made and Occurrence policies.

The purpose of the Certificate of Insurance has been the topic of frequent discussions throughout the industry. Attention centers around the true purpose of a certificate and the rights, if any, it conveys to a certificate holder. In a 1974 court decision (United States Pipe & Foundry Co. v United States Fidelity & Guaranty Co., 505 F. 2d 88 (5th Cir. 1974), the court ruled that a certificate is not a contract between the holder and the insurer. It only provides information to an interested third party that insurance is in force at the time of issuance. The court also stated: “The provision regarding notification in the event of cancellation is a mere promise, unsupported by any consideration.” Although many companies provide notice of cancellation to certificate holders, they are not obliged to do so, since the holder is not a party to the contract.

The Certificate of Liability Insurance is used for most casualty situations in which the insured has requested certification to a third party of issued casualty coverages. The uses of the Certificate can include large and small contracting or manufacturing risks, lessor/lessee agreements, or other areas of liability certification.

The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:

- To waive rights
- To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Leased Auto Certificate of Insurance, should be used for this)
- To quote wording from a contract
- To attach to an endorsement
- To quote any wording which amends a policy unless the policy itself has been amended.

**IMPORTANT**

ACORD is required to file certificates, on behalf of form users, in a number of states. Please access the ACORD website to download the Forms Filing Requirements document for complete details.

**TASK FORCE RECOMMENDATIONS – GENERAL USE OF THE ACORD FORM**

1. Follow the ACORD Forms Instruction Guide.
2. Use the ACORD Form 25 (2010/05) – Certificate of Liability Insurance for all lines of liability insurance, unless the certificate holder requires a different form.
3. If the certificate holder requires a different form, be sure the form has been approved by the Texas Department of Insurance.
4. Do not use the ACORD Form 25 to certify coverage on any type of property or inland marine policy.
5. Do not alter any wording on the ACORD form.

# ACORD 25 – Certificate of Liability Insurance

## INSURED

**INSURED**

### ACORD Forms Instruction Guide

Enter the insurer's full legal company name(s) as found in the file copy of the policy. Use the actual name of the company within the group to which the policy has been issued. This is not the insurer's group name or trade name.

### TASK FORCE RECOMMENDATIONS – INSURED

1. Follow the ACORD Forms Instruction Guide.
2. Check the policy to be sure the name entered on the certificate is a named insured on the policy, either in the declarations or on a separate endorsement that includes a list of named insureds.
3. Do not enter a name that is added to the policy as an additional insured.

# ACORD 25 – Certificate of Liability Insurance

## INSURER(S) AFFORDING COVERAGE

INSURER(S) AFFORDING COVERAGE
INSURER A:
INSURER B:
INSURER C:
INSURER D:
INSURER E:

### ACORD Forms Instruction Guide

Enter the insured's name and address as they appear on the policy declarations page.

### TASK FORCE RECOMMENDATIONS – INSURER(S) AFFORDING COVERAGE

1. Follow the ACORD Forms Instruction Guide.
2. Enter the exact name of each insurance company on the policies or binders for the policies to be entered in the Coverages section. Do not enter a company group or trade name, or a wholesaler or broker.

# ACORD 25 – Certificate of Liability Insurance

## TYPE OF INSURANCE – GENERAL LIABILITY

TYPE OF INSURANCE
<b>GENERAL LIABILITY</b>
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY
<input type="checkbox"/> <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR
<input type="checkbox"/> _____
<input type="checkbox"/> _____
GEN'L AGGREGATE LIMIT APPLIES PER:
<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC

### ACORD Forms Instruction Guide

Complete this section if you are certifying a Commercial General Liability policy or some similar type of liability coverage. Check or "x" the box for Commercial General Liability (CGL) and one of the corresponding boxes to designate the type of policy issued – Claims Made or Occurrence (Occur). The two open option boxes allow listing of liability coverages not found on this form. Check or "x" the box and list the coverage type next to the available box. An example of this would be issuing a certificate for Owners and Contractors Protective Liability. The first box would be checked and "Owners and Contractors Protective Liability" would be inserted on the line after the box. Check or "x" the appropriate box to indicate if the general aggregate limit applies per policy, per project, or per location if such option is endorsed on the policy.

### TASK FORCE RECOMMENDATIONS – TYPE OF INSURANCE – GENERAL LIABILITY

1. Follow the ACORD Forms Instruction Guide.
2. Most agency personnel do not handle "claims-made" CGL policies on a regular basis. They need special handling. Designate one person in the agency as the "claims-made expert." Stamp "Claims Made Policy" on the file jacket and policy declarations. Develop procedures to offer "tail" coverage if needed when a policy is canceled, not renewed, or moved to a different insurer.
3. Don't check the CGL box unless the policy includes the Commercial General Liability coverage form. If the policy includes only some other coverage form (e.g., Owners and Contractors Protective Liability, Liquor Liability, Railroad Protective Liability), check the open box with a blank line and insert the coverage form title on the blank line.

# ACORD 25 – Certificate of Liability Insurance

## TYPE OF INSURANCE – AUTOMOBILE LIABILITY

TYPE OF INSURANCE
<b>AUTOMOBILE LIABILITY</b>
<input type="checkbox"/> ANY AUTO
<input type="checkbox"/> ALL OWNED AUTOS
<input type="checkbox"/> SCHEDULED AUTOS
<input type="checkbox"/> HIRED AUTOS
<input type="checkbox"/> NON-OWNED AUTOS
<input type="checkbox"/> _____
<input type="checkbox"/> _____

### ACORD Forms Instruction Guide

Complete this section if you are certifying automobile liability. Check all appropriate boxes to correspond with the covered auto symbols found on the policy declarations page. The last available option box allows listing an automobile liability coverage not found on this form. List the coverage type next to this optional box. If the certificate is being issued to the owner of a leased vehicle, DO NOT USE THIS FORM. Use ACORD 23, Automobile Certificate of Insurance.

### TASK FORCE RECOMMENDATIONS – TYPE OF INSURANCE – AUTOMOBILE LIABILITY

1. Follow the ACORD Forms Instruction Guide.
2. The following covered auto symbols correspond to the wording on the certificate:
  - Any Auto = 1
  - All Owned Autos = 2
  - Scheduled Autos = 7
  - Hired Autos = 8
  - Non-Owned Autos = 9

# ACORD 25 – Certificate of Liability Insurance

## TYPE OF INSURANCE – UMBRELLA OR EXCESS LIABILITY

TYPE OF INSURANCE
<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION   \$

### ACORD Forms Instruction Guide

Complete this section if you are certifying some type of excess or umbrella liability. Check the appropriate box to indicate the policy type – umbrella or excess. Check the appropriate box to indicate whether the “coverage trigger” is on a claims made or an occurrence basis. Check the appropriate box to indicate whether there is a deductible or retention and enter the retention or deductible amount.

### TASK FORCE RECOMMENDATIONS – TYPE OF INSURANCE – EXCESS/UMBRELLA LIABILITY

1. Follow the ACORD Forms Instruction Guide.
2. Most agency personnel do not handle “claims-made” umbrella policies on a regular basis. They need special handling. Designate one person in the agency as the “claims-made expert.” Stamp “Claims Made Policy” on the file jacket and policy declarations. Develop procedures to offer “tail” coverage if needed when a policy is canceled, not renewed, or moved to a different insurer.
3. If the General Liability “occurrence” box is checked and the Umbrella Liability “claims-made” box is checked, it is probably a mistake and should be reviewed carefully.

# ACORD 25 – Certificate of Liability Insurance

## TYPE OF INSURANCE – WORKERS COMPENSATION

TYPE OF INSURANCE
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY
ANY PROPRIETOR/ PARTNER/ EXECUTIVE OFFICER/ MEMBER EXCLUDED? <input type="checkbox"/> Y/N
If yes, describe under DESCRIPTION OF OPERATIONS below

### ACORD Forms Instruction Guide

Complete this section if you are certifying workers compensation and employers liability. If workers' compensation coverage is based on statutory limits, check the appropriate box within the limit section.

### TASK FORCE RECOMMENDATIONS – TYPE OF INSURANCE – WORKERS' COMPENSATION

1. Follow the ACORD Forms Instruction Guide.
2. Do not use this section for occupational accident and employers' liability written for non-subscribers. Use the blank section instead.
3. Always answer the question concerning exclusions for principals of the business, and give names or a general description (such as "all executive officers") in the Description of Operations section.
4. Note that the "Additional Insured" box is pre-filled with "NA". There is no provision for adding additional insureds on workers' compensation policies. If the Alternate Employer endorsement is attached to the policy in favor of the certificate holder, indicate this information in the Description of Operations section.

# ACORD 25 – Certificate of Liability Insurance

## TYPE OF INSURANCE – BLANK

TYPE OF INSURANCE

### ACORD Forms Instruction Guide

This section certifies other coverages that are not listed on the form. The type of insurance, policy number, policy effective date, policy expiration date and limits sections should be completed.

### TASK FORCE RECOMMENDATIONS – TYPE OF INSURANCE – BLANK

1. Follow the ACORD Forms Instruction Guide.
2. Use this section for miscellaneous liability policies, such as professional liability or bailee liability.
3. Enter the exact name of the policy – like “Bailee Customer Liability” – rather than attempt to describe the coverage.

# ACORD 25 – Certificate of Liability Insurance

## INSURER LETTER

INSR LTR

### ACORD Forms Instruction Guide

Enter the Company Letter of the company, as identified in the Insurer(s) Affording Coverage section, next to the appropriate coverage(s).

### TASK FORCE RECOMMENDATIONS – INSURER LETTER

1. Follow the ACORD Forms Instruction Guide.

# ACORD 25 – Certificate of Liability Insurance

## ADDITIONAL INSUREDS

<b>ADDL INSR</b>

### ACORD Forms Instruction Guide

Enter “Y” for YES or check or “x” the box if the certificate holder has been named as an additional insured on the policy.

### **TASK FORCE RECOMMENDATIONS – ADDITIONAL INSUREDS**

1. Follow the ACORD Forms Instruction Guide.
2. Do not check the box or enter “Y” for Yes if a blanket additional insured endorsement applies.
3. See “Additional Insureds” in this publication for detailed information and recommendations regarding additional insureds.

# ACORD 25 – Certificate of Liability Insurance

## WAIVERS OF SUBROGATION

<b>SUBR WVD</b>

### ACORD Forms Instruction Guide

Enter “Y” for YES or check or “x” the box if subrogation has been waived on the policy.

### **TASK FORCE RECOMMENDATIONS – WAIVERS OF SUBROGATION**

1. Follow the ACORD Forms Instruction Guide.
2. Do not check the box or enter “Y” for Yes if a blanket waiver of subrogation endorsement applies.
3. See “Waiver of Subrogation” in this publication for detailed information and recommendations regarding waivers of subrogation.

# ACORD 25 – Certificate of Liability Insurance

## POLICY NUMBER

<b>POLICY NUMBER</b>

### ACORD Forms Instruction Guide

Enter the identifier assigned by the insurer to the policy, or submission, referenced exactly as it appears on the policy, including prefix and suffix symbols. If required for self-insurance, the self-insured license or contract number.

### TASK FORCE RECOMMENDATIONS – POLICY NUMBER

1. Follow the ACORD Forms Instruction Guide.
2. If the insurer has not issued a policy number yet, show “Policy Number Pending Issuance of Policy” or “Binder #\_\_\_\_” and suspense to send another certificate when the policy number becomes available. Do not put a binder number here unless you identify it as a binder; in other words, do not represent a number to be the policy number when it is not.

# ACORD 25 – Certificate of Liability Insurance

## POLICY EFFECTIVE AND EXPIRATION DATES

POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)

### ACORD Forms Instruction Guide

Enter the effective and expiration dates of the policy.

### TASK FORCE RECOMMENDATIONS – POLICY EFFECTIVE AND EXPIRATION DATES

1. Follow the ACORD Forms Instruction Guide.
2. If the policy has been ordered and bound but not issued yet, show the requested policy inception and expiration dates, not the binder dates.

# ACORD 25 – Certificate of Liability Insurance

## LIMITS OF LIABILITY

### General Liability

LIMITS	
EACH OCCURRENCE	\$
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
MED EXP (Any one person)	\$
PERSONAL & ADV INJURY	\$
GENERAL AGGREGATE	\$
PRODUCTS – COMP/ OP AGG	\$

### Excess/Umbrella Liability

LIMITS	
EACH OCCURRENCE	\$
AGGREGATE	\$

### Workers Compensation and Employers' Liability

	WC STATU-TORY LIMITS	OTHER	
E.L. EACH ACCIDENT			\$
E.L. EA EMPLOYEE			\$
E.L. DISEASE – POLICY LIMIT			\$

### Automobile Liability

LIMITS	
COMBINED SINGLE LIMIT (Ea accident)	\$
BODILY INJURY (Per person)	\$
BODILY INJURY (Per accident)	\$
PROPERTY DAMAGE (Per accident)	\$

### ACORD Forms Instruction Guide

All limits should be listed as whole dollar amounts, as found on the policy declarations page. Any questions about appropriate limits or applicable policy coverage(s) should be answered by the issuing insurer(s).

## TASK FORCE RECOMMENDATIONS – LIMITS

1. Follow the ACORD Forms Instruction Guide.
2. Some businessowners policies (BOPs) show only the each-occurrence liability limit on the policy declarations page, and do not show the aggregate limits. If the limits required on the certificate are not on the declarations page, DON'T GUESS. Read the policy language regarding limits of liability and determine what the appropriate entries should be, or ask the insurer, or leave it blank on the certificate.
3. Because of the disclaimer wording on the certificate, it is not necessary to disclose that the aggregate limit has been reduced by paid claims when a certificate is issued during the policy period, even when that information is known by the agent.
4. If products / completed operations liability or personal / advertising injury or medical expense is excluded by endorsement, enter "Not Covered" on those lines.

# ACORD 25 – Certificate of Liability Insurance

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES

Description of Operations / Locations / Vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

### ACORD Forms Instruction Guide

This section should be used to provide additional comments or special conditions that may exist upon the policy, or record information necessary to identify the operations, locations and vehicles for which the certificate was issued. ACORD 101, Additional Remarks Schedule, may be attached if more space is required.

### **TASK FORCE RECOMMENDATIONS –DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

1. Follow the ACORD Forms Instruction Guide.
2. See “The BOX” in this publication for detailed information and recommendations regarding this section.

# ACORD 25 – Certificate of Liability Insurance

## CERTIFICATE HOLDER

### CERTIFICATE HOLDER

### ACORD Forms Instruction Guide

Name and mailing address of the individual or entity for which the certificate is being prepared.

### TASK FORCE RECOMMENDATIONS – CERTIFICATE HOLDER

1. Follow the ACORD Forms Instruction Guide.

# ACORD 25 – Certificate of Liability Insurance

## CANCELLATION

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

### ACORD Forms Instruction Guide

Silent

### TASK FORCE RECOMMENDATIONS – CANCELLATION

1. See “Notice of Cancellation to Certificate Holders” in this publication for a discussion on this section.

# ACORD 25 – Certificate of Liability Insurance

## AUTHORIZED REPRESENTATIVE

AUTHORIZED REPRESENTATIVE

### ACORD Forms Instruction Guide

Sign here. Accommodates the signature of the authorized representative (e.g., producer, agent, broker, etc.) by all companies listed on the document. This is required in most states.

### TASK FORCE RECOMMENDATIONS – AUTHORIZED REPRESENTATIVE

1. Follow the ACORD Forms Instruction Guide
2. Facsimile or electronic signature of an authorized representative is permitted.
3. For an admitted insurer with which your agency is appointed, the authorized representative can be (1) an agency principal (owner, partner or executive officer); (2) an employee with a general lines license who has been appointed by the agency (at the time the individual was originally licensed, or by filing form TDI-501 with TDI) and has been authorized by an agency principal to execute certificates; or, an employee with an ISR license who has been appointed by the agency (at the time the individual was originally licensed, or by filing ISR Transfer form with TDI) and has been authorized by an agency principal to execute certificates.
4. For an admitted insurer with which your agency is not appointed, the authorized representative must be a licensed agent who is appointed by the insurer – usually the managing general agency or wholesaler. For more information, see “Certificates on Policies Written Through Wholesalers” in this publication.
5. For a non-admitted (surplus lines) insurer, the authorized representative must be a licensed surplus lines agent who has been authorized by the originating surplus lines agent or the insurer to execute certificates of insurance. For more information, see “Certificates on Policies Written Through Wholesalers” in this publication.
6. If you are the authorized representative for one insurer entered on the certificate but not for another insurer, you should prepare two certificates and obtain the signature of an authorized representative for the other insurer.

# NON-STANDARD CERTIFICATES OF INSURANCE AND QUESTIONNAIRES

If E&O exposures related to issuing standard ACORD certificates are considered significant, then consider the exponential increase in that exposure when an agency is asked to execute a non-standard certificate.

Large oil companies, general contractors and home builders are notorious for using the power of their market position to demand special certificates, as well as supplemental questionnaires. Some of these documents require the agent to certify coverages that are not available – either from the insurer writing the account or in the marketplace generally – or cause the unsuspecting agent to misrepresent coverage provided on the policy.

The best advice, of course, is to always use standard certificates (like the ACORD 25) and not alter the wording. In reality, a certificate holder may require special wording before the client can go to work or get paid for the job.

Senate Bill 425 (effective January 1, 2012) will go a long way toward solving this problem. Certificates of Insurance and custom questionnaires must be filed with and approved by the Texas Department of Insurance.

## **TASK FORCE RECOMMENDATIONS – NON-STANDARD CERTIFICATES AND QUESTIONNAIRES**

1. Do not prepare certificates of insurance other than the standard ACORD form, or special questionnaires, until you confirm the form has been approved by TDI. If it has not been approved, prepare an ACORD certificate and transmit it to the certificate holder using the sample wording in Exhibit #1.
2. Send non-standard certificates and questionnaires to the insurer or wholesaler for review and completion or authorization.
3. Do not prepare certificates of insurance other than the standard ACORD form, or special questionnaires, without receiving specific authorization from the insurer or wholesaler.
4. If the insurer won't complete or authorize you to complete the certificate or questionnaire required by the certificate holder, send an ACORD certificate and transmit it to the certificate holder using the sample wording in Exhibit #2.
5. If you are unable to comply with any items requested on the certificate or to answer any question on a questionnaire, tell the insured and the certificate holder which items and why. See sample wording in Exhibit #3.

**Exhibit #1: Sample wording to certificate holder when the certificate form or questionnaire has not been approved by the Texas Department of Insurance.**

We have issued an industry-standard ACORD certificate of insurance issued on your behalf for the captioned client. A law passed by the Texas Legislature effective January 1, 2012 (Senate Bill 425) requires certificate forms (as well as questionnaires and related documents) to be filed with and approved by the Texas Department of Insurance. We are prohibited by law from issuing a certificate unless it has been approved. The certificate form you furnished for issuance was not found on the list of approved forms. For more information regarding the law or details on how to obtain approval of your form, please go to this website: [www.tdi.texas.gov/certificates](http://www.tdi.texas.gov/certificates)

**Exhibit #2: Sample wording to certificate holder when you are unable to furnish the certificate or questionnaire required by the certificate holder.**

We are pleased to attach an industry-standard ACORD certificate of insurance issued on your behalf for the captioned client. The insurance company will not execute, and would not authorize our agency to execute, the special certificate of insurance or questionnaire you requested.

**Exhibit #3: Sample wording to certificate holder when you are unable to comply with any items requested on a special certificate or to answer any question on a questionnaire.**

We are pleased to attach the certificate of insurance issued on your behalf for the captioned client. The insurance company will not answer, and would not authorize our agency to answer, the items listed below.

# ADDITIONAL INSUREDS

From an E&O standpoint, the most significant exposure to errors on certificates of insurance involves a certificate holder's request for additional insured status on a customer's policies. The ACORD certificate contains an important disclaimer, as well as a warning for the agent who is preparing the certificate:

**IMPORTANT: If the certificate holder is an additional insured, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

In other words, an additional insured isn't added to the policy just because the certificate says the certificate holder is an additional insured.

Another problem arises when an additional insured endorsement is added to the policy and the agent knows the endorsement doesn't match the certificate holder's expectations or contractual requirements. In that case, it is the agent's responsibility to inform the customer and the certificate holder that the insurer is unable or unwilling to provide the requested coverage.

## Requests for Additional Insured Status

In the construction industry, a general contractor will often require a subcontractor to provide coverage for the general contractor as an additional insured under the subcontractor's liability policy. The general contractor has overall responsibility for the project and activities at the construction site, yet most likely has little, if any, actual involvement in subcontractor's work. The purpose behind securing additional insured coverage in the construction context is to pass the cost, and risk of loss, to the subcontractor who has active involvement and control of its operations and its employees.

The general contractor and subcontractor negotiate this risk transfer to the subcontractor in the contract between the parties. The subcontractor may be required not only to make the general contractor an additional insured on the policy, but also provide contractual liability coverage to secure the indemnity obligations in the construction agreement, a "belt and suspenders" approach to risk allocation.

Problems arise when the parties and the courts attempt to determine the scope of coverage available to the additional insured. There are a myriad of forms providing additional insured coverage. The most commonly used forms are discussed on the following pages.

## **Additional Insured – Ongoing Operations – CG 20 10**

**WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal or advertising injury” caused, in whole or in part by:**

- 1. Your acts or omissions; or**
- 2. The acts or omissions of those acting on your behalf;**

**in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.**

**(ISO endorsement CG 20 10 07 04)**

This is one of the most common endorsements in the construction industry.

**Ongoing Operations.** The scope of coverage for the additional insured (general contractor) is determined by the named insured’s (subcontractor’s) “ongoing” operations. The “ongoing” language was added to the 1993 version of the endorsement to clarify the intent of insurers to cover a general contractor only while the subcontractor is working on the project. In other words, once the subcontractor’s work is complete, the general contractor no longer has coverage under the policy.

ISO called the endorsement revision a “clarification,” but many in the industry saw it as a reduction in coverage, because previous editions of the endorsements were assumed to cover the additional insured for completed operations, at least during the policy period. The revised endorsements terminate coverage during the policy period, once operations are completed.

Work agreements occasionally demand additional insured coverage on the 1985 edition of the CG 20 10 to avoid the perceived restriction of coverage. If your insured gets such a request, you will have to ask the carrier if it can provide the earlier edition. Most carriers cannot or will not provide the 1985 edition because they withdrew the endorsement from their TDI filing when they filed the later form editions.

**Sole Negligence.** The Insurance Services Office (ISO) revised its additional insured endorsements in 2004 to counter court decisions that broadly interpreted the language in the older forms to find coverage for the sole negligence of the additional insured, absent any negligence on the part of the named insured.

Since that was never the original intent, the new forms restrict coverage to liability “caused in whole or in part” by the acts or omissions of the named insured or those acting on behalf of the named insured.

If the contract between the general contractor and the subcontractor requires the subcontractor to provide additional insured coverage that includes the sole negligence of the general contractor, the 2004 edition of the ISO additional insured endorsements do not comply with this requirement.

## **Additional Insured – Completed Operations – CG 20 37**

**WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the “products-completed operations hazard”.**  
**ISO endorsement CG 20 37 07 04**

The appropriate endorsement to cover the additional insured for completed operations is endorsement CG 20 37 (Additional Insured – Owners, Lessees or Contractors – Completed Operations).

It should be noted, however, that the coverage provided by this endorsement may be illusory as respects the additional insured general contractor. The “trigger” for a covered CGL claim is the date on which the bodily injury or property damage occurs. That could be several years after the job has been completed. If this endorsement is not attached to the subcontractor’s CGL policy when the bodily injury or property damage occurs, the a general contractor will have no coverage.

### **Special Texas Additional Insured Endorsements**

ISO introduced special additional insured endorsements for Texas policyholders in 2012:

- CG 33 95 05 12 is used for ongoing operations instead of CG 20 10 07 04.
- CG 33 94 05 12 is used for completed operations instead of CG 20 37 07 04.

The 2012 edition of the additional insured endorsements reflects the anti-indemnity legislation passed by the Legislature in 2011. House Bill 2093 added Chapter 151 to the Texas Insurance Code and applies to indemnification and additional insured provisions in certain construction contracts entered into after January 1, 2012.

The law declares “void and unenforceable” a provision in a construction contract that requires additional insured coverage for another person’s negligence. There is one significant exception to the prohibition (a claim for BI or death of a subcontractor’s employee) and several types of construction agreements were exempted from the law (residential projects, agreements subject to the oil field anti-indemnity statute, railroad protective agreements and public works projects for municipalities).

The 2012 additional insured endorsements simply contain one new paragraph referring to Chapter 151. If the named insured enters into a construction contract subject to the provisions of Chapter 151, then coverage for the additional insured only applies to the extent permitted by Chapter 151 – meaning no coverage for the additional insured’s sole negligence, even if the claim arises out of joint negligence by the named insured. (Note: ISO withdrew these special Texas endorsements in its April 2013 revision. Endorsements CG 20 10 04 13 and CG 20 37 04 13 include language that limits the coverage afforded to the additional insured to “the extent permitted by law.” This language effectively incorporates the provisions of Chapter 151 into the new endorsements.)

## **Automatic (Blanket) Additional Insured Endorsements**

In years past, CGL policyholders who needed to add additional insureds to their policy were required to notify the agent or company so the policy could be endorsed to name each additional insured. Company-specific “automatic” additional insured endorsements appeared a few years ago and became so popular that ISO introduced its own versions of these endorsements in 1997.

These forms have peculiar provisions that require close attention. For example, ISO endorsement CG 20 33 (Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement with You) and most company-specific forms provide insured status to:

**...any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability ... caused ... in the performance of your ongoing operations for the additional insured.  
(ISO endorsement CG 20 33 07 04)**

With this wording, you must verify that there is a contract between your insured and the entity requesting additional insured status. If you don't and you issue a certificate of insurance showing the entity as an additional insured when there is no contract, the additional insured endorsement does not cover that entity as an additional insured because there is no contract.

The equivalent endorsement for Texas policyholders introduced in 2012 is CG 33 93 05 12. (Note: ISO withdrew this special Texas endorsement in its April 2013 revision. Endorsement CG 20 33 04 13 includes language that limits the coverage afforded to the additional insured to “the extent permitted by law.”)

## **Lengthy Lists of Additional Insureds**

Occasionally a contract contains a lengthy list of persons to whom additional insured status is to be granted. (Example: ABC General Contractors, Inc., its subsidiaries and affiliates, and its co-lessees and joint venturers, and their directors, officers and employees.) Insurers are reluctant to comply with this type of request because the list doesn't limit the extension of coverage to persons directly related to the work being performed. Some insurers, however, may agree to the requested wording on a standard additional insured endorsement in order to comply.

Most automatic (blanket) additional insured endorsements cover only the person or organization that is a signatory to the contract while the insured is performing operations for that person or organization, so these endorsements can't be used to comply. Some insurers, however, use automatic additional insured endorsements that do comply with these requirements. ISO introduced a new standard endorsement (CG 20 38 04 13) in its 2013 revision to accommodate these requests.

## Primary and Non-Contributory

When your insured tells you that his general contractor wants to be added as an additional insured and he wants your insured's policy to be primary and non-contributory, what does that mean?

It means that the general contractor wants your insured's policy to be the primary source of recovery so that the general contractor's policy does not contribute to defense or indemnification should the general contractor be sued as the result of an accident caused by your insured. The general contractor doesn't want to tap into his own CGL policy unless and until your subcontractor's policy limit is exhausted. What do you do?

First, here's what not to do: Don't just add primary and non-contributory wording to the certificate of insurance. Your insured's CGL may not be primary and non-contributory and you can't make it happen just by saying so on the certificate.

Besides, whether your insured's CGL is primary may depend entirely on the wording in the general contractor's CGL! If the general contractor's policy is a 1998 or later edition of the ISO CGL, it includes the following wording:

**This insurance is excess over any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.**

If the general contractor's policy includes this wording, he (or his lawyer or his insurance agent) is asking for the primary and non-contributory wording out of ignorance of the wording in his own policy.

Some carriers can provide an endorsement with "Primary and Non-Contributory" wording. ISO introduced a standard endorsement in the 2013 edition changes (CG 20 01 – Primary and Noncontributory – Other Insurance Condition). Even if such an endorsement is attached, the certificate of insurance should not make a declaratory statement such as: "Coverage for the additional insured will be primary and non-contributory."

## Additional Insureds on the Business Auto Policy

Most parties that request additional insured status on business auto policies are in fact already considered additional insureds by the terms of the policy. In the Who Is an Insured section, paragraph "c" includes:

**Anyone liable for the conduct of an insured described above but only to the extent of that liability.**

The additional insured endorsements available for attachment to the BAP do nothing to enhance this status. If the person or entity named in the endorsement is not already an insured by the terms of paragraph "c", then the endorsement does not make them an additional insured. The following standard endorsements are available:

- Endorsement CA 20 48 Designated Insured (ISO BAP) designates a person or entity listed in the endorsement as an insured, but only to the extent that person or entity already qualifies as an insured in the Who Is an Insured provision.
- Endorsement TE 99 01 Additional Insured (Texas BAP) names an additional insured for liability coverage, but only to the extent that person or entity already qualifies as an insured in the Who Is an Insured provision, and allows for a 10-day notice of cancellation to the additional insured.

A certificate holder's request that the insured's policy be primary and non-contributory is just as much a problem on the BAP as it is on the CGL. For the most common exposure – a certificate holder's vicarious liability arising out of the named insured's use of an auto owned by the named insured – the auto policy takes care of this automatically. The "Other Insurance" provision of the General Conditions section on the business auto policy provides primary insurance for any covered accident involving an auto owned by the named insured. For other exposures, such as non-owned autos, there is no standard way to endorse the policy to provide a certificate holder with primary liability coverage. Some insurers may provide a "Primary and Non-Contributory" endorsement for the BAP. Even if such an endorsement is attached, the certificate of insurance should not make a declaratory statement such as: "Coverage for the additional insured will be primary and non-contributory."

### **Additional Insureds on Employers' Liability Policies**

There is no provision for adding an additional insured to employers' liability coverage. The closest thing is endorsement WC 00 03 01 (Alternate Employer). This form is used when the named insured has agreed to provide workers' compensation and employers' liability coverage for claims made by an employee of the named insured against a "special" or "temporary" employer (called the alternate employer for the purposes of this endorsement).

In this situation, Texas law may consider both to be co-employers, especially when the alternate employer has a right to direct and control the details of the work being performed. Examples: (1) an employee leasing company or temporary help company agrees to provide coverage for leased or temporary employees; (2) an oil field contractor agrees to protect the oil company from claims brought by the contractor's employees; (3) a property manager agrees to protect the property owner from claims brought by the insured's employees while working at the owner's property.

The coverage afforded by the endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers' compensation law, and the carrier is not required to file any such evidence with the workers' compensation regulatory authority.

There are two primary functions for the endorsement: (1) it directs the named insured's workers' compensation policy to respond to an employee injury, even if the alternate employer also has a workers' compensation policy; and (2) the employers' liability portion of the named insured's policy will respond if the injured employee or a deceased employee's survivors sue the alternate employer.

## TASK FORCE RECOMMENDATIONS – ADDITIONAL INSURED

1. Check the box for “Additional Insured” in each section of COVERAGES when an endorsement specifically naming the certificate holder as an additional insured is attached for that particular policy. Do not check the box when the policy includes a blanket automatic additional insured endorsement that provides additional insured status only when there is a written contract between the insured and the certificate holder. Use the sample wording in Exhibit #4 when the policy includes a blanket additional insured endorsement.
2. When a policy doesn’t include a blanket additional insured endorsement, request the appropriate additional insured endorsement from the company and obtain written confirmation that the endorsement has been or is being issued before releasing a certificate of insurance.
3. Use the sample wording in Exhibit #5 when you know the additional insured endorsement doesn’t match the certificate holder’s requirements.
4. Attach copies of additional insured endorsements to the certificate.
5. If the additional insurer language is embedded in the policy, use the sample wording in Exhibit #4.

### **Exhibit #4: Sample wording to certificate holder when the policy includes a blanket additional insured endorsement.**

The [ ] policy includes a blanket automatic additional insured endorsement [provision] that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

### **Exhibit #5: Sample wording to certificate holder when the additional insured endorsement doesn’t match requirements.**

- The [ ] policy does not contain a special endorsement with “Primary and Noncontributory” wording.
- The [ ] policy contains a special endorsement with “Primary and Noncontributory” wording.
- Due to filing requirements of the Texas Department of Insurance, the insurance company is only permitted to use additional insured endorsement # (number, edition date).
- The insurance company allows only the certificate holder to be shown as an additional insured and does not allow the listing of multiple persons as additional insureds.

# CONTRACTUAL LIABILITY

In the context of risk allocation, no single issue may be of more significance than the indemnity agreement and contractual liability insurance coverage.

An indemnity agreement is the foundation of risk allocation, but the subcontractor may be saddled with significant uninsured exposures if the indemnity agreement is drafted too broadly in favor of the general contractor.

Conversely, a valid indemnity agreement may be of little practical benefit to the general contractor if contractual liability insurance does not support the indemnity obligation.

In a commercial general liability policy, contractual liability coverage is typically provided through an exception to an exclusion.

**This insurance does not apply to: “Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.**

**This exclusion does not apply to liability for damages assumed in a contract or agreement that is an “insured contract” provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement.**

The term “insured contract” has several meanings under the standard ISO commercial liability coverage form, including contracts for lease of premises, sidetrack agreements, and elevator maintenance agreements. In the context of a construction agreement, however, the relevant portion of the definition is as follows:

**That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of the contract or agreement.**

The most important aspect of contractual liability coverage is whether the party seeking indemnity (the “indemnitee”) has contractually required the other party (the “indemnitor”) to “assume the tort liability” of the indemnitee to pay for “bodily injury” or “property damage” to a third party; if not, no contractual liability coverage is afforded. In order to make a determination of this issue, an examination of the contractual arrangement between the indemnitor and indemnitee is required.

To make matters potentially even worse, ISO introduced what it calls an “optional underwriting tool” in 2004 that further restricts contractual liability coverage. Endorsement CG 24 26 07 04 (Amendment of Insured Contract Definition) adds language that excludes coverage for the sole negligence of a third party, even when it is assumed by insured contract. The Texas-special 2012 edition of this endorsement (CG 33 90) contains a new provision that applies if the construction contract is subject to Chapter 151. (Note: ISO withdrew this special Texas endorsement in its April 2013 revision. Endorsements CG 24 26 04 13 includes language that

limits the coverage afforded to the additional insured to “the extent permitted by law.” This language effectively incorporates the provisions of Chapter 151 into the new endorsements.) Under this provision, coverage is precluded for an indemnitee’s sole negligence, even if the claim arises out of joint negligence for the named insured.

Contractual liability coverage generally involves complicated issues, not only from the standpoint of determining whether the indemnity agreement is valid, but in evaluating whether coverage is afforded under the policy. The answers to many of the questions are fact-intensive, and often there are no easy answers. Even courts have difficulty assessing these issues and have often reached inconsistent conclusions.

It may be safe to say that no liability policy can possibly cover everything a contractor generally agrees to in an indemnity agreement. For this reason, agents must be careful not to give the impression that a policy does just that.

### **TASK FORCE RECOMMENDATIONS – CONTRACTUAL LIABILITY**

1. Do not enter anything in the DESCRIPTION section regarding contractual liability.
2. Use the transmittal wording in Exhibit #6 when you know the contractual liability coverage on the policy doesn’t match the certificate holder’s requirements.
3. Use the transmittal wording in Exhibit #7 when endorsement CG 24 26 07 04 (Amendment of Insured Contract Definition) is attached to the policy.

#### **Exhibit #6: Sample wording to certificate holder when you know the contractual liability coverage does not match the certificate holder’s requirements and/or does not cover all liabilities assumed under the contract.**

The contractual liability coverage provided by the policies is standard and may not cover all liabilities assumed by the named insured under its contract with the certificate holder.

#### **Exhibit #7: Sample wording to certificate holder when endorsement CG 24 26 07 04 (or equivalent) is attached to the policy.**

The general liability policy includes endorsement CG 24 26 [or CG 33 90] that eliminates coverage for the sole negligence of a third party assumed by contract.

# WAIVER OF SUBROGATION

*(Much of the material in the following report was reprinted with permission of the Virtual University, copyright 1999-2005 by the Independent Insurance Agents & Brokers of America.)*

One of the most common contractual requirements your commercial insureds face is a requirement to waive a right of subrogation. Most often, these waivers are one-sided when it comes to general liability, business auto, and workers compensation.

Certificate holders sometimes ask for policies to include a waiver of subrogation in the certificate holder's favor. The ACORD certificate contains an important disclaimer, as well as a warning for the agent who is preparing the certificate:

**If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

If the policy doesn't permit the insured to waive rights to subrogation, the waiver can't be added to the policy just because the certificate says the policy includes a waiver.

It is the agent's responsibility to inform the customer and the certificate holder when the insurer is unable or unwilling to waive subrogation by endorsement.

## Subrogation Waivers in General

Losses are often caused by someone's negligence. In general, and as a matter of equity, the negligent party should be liable for the consequences of such negligence.

For example, a general contractor's employee is primarily responsible for bodily injury or property damage at the jobsite, but the subcontractor is included in legal action brought by the injured party. The subcontractor's liability insurer pays an amount to settle the claim against the subcontractor. When payment is made, the subcontractor is typically required to transfer rights of recovery against the negligent party to the insurer who then "subrogates" to recover the amount paid.

However, if the subcontractor has agreed in a provision of the construction agreement to waive any right of recovery against the general contractor, the insurer loses the right to subrogate. Insurance policies deal with this in different ways.

## General Liability

The ISO CGL policy grants the insurer the following right of subrogation:

**If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.**

Note that this subrogation right only applies to acts that take place “after loss.” There is otherwise no explicit grant of subrogation right to the insurer, and likewise no prohibition of the insured’s right to waive the right of subrogation BEFORE a loss, and no requirement that it be in writing.

In practice and in common law, insurers have a right to recover paid losses from negligent third parties. In order to clarify this and provide a means to designate a person or entity in the policy, ISO provides endorsement CG 24 04 (Waiver of Transfer of Rights of Recovery Against Others To Us), which reads as follows:

**We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.**

If this endorsement is used, care must be taken to schedule all persons or organizations on which the contract requires the insured to waive subrogation rights.

Some insurers provide “blanket” waiver of subrogation endorsements to automatically provide the waiver when required by a written contract. However, such endorsements generally apply only to subrogation against the person or organization that is a signatory to the contract while the other party is performing operations for that person or organization. If the written contract between the general contractor and the subcontractor requires waiver of subrogation against other parties, the blanket waiver of subrogation endorsement is not suitable and a specific waiver endorsement must be used to name all the parties.

### **Business Auto Policy**

The Business Auto policy includes the following subrogation provision:

**If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after “accident” or “loss” to impair them.**

Note that, similar to the CGL policy, this subrogation right only applies to acts that take place “after loss.” In order to clarify and provide a means to designate a person or entity in the policy, ISO provides endorsement CA 04 44 (Waiver of Transfer of Rights of Recovery Against Others To Us (Waiver of Subrogation)), and the Texas standard BAP provides endorsement TE 20 46 (Changes in Transfer of Rights of Recovery) which read as follows:

**The Condition entitled “Transfer of Rights of Recovery Against Others To Us” does not apply to ...**

Like the CGL endorsement, care must be taken when using this endorsement to schedule all persons or organizations on which the contract requires the insured to waive subrogation rights.

## Workers' Compensation Insurance

Here is a typical scenario: An insured is doing work for another firm when one of the insured's employees is injured on the job. The insured's workers' compensation insurer pays the claim, then seeks recovery from the firm for whom the work is being performed on the basis that it was liable in some way for the injury.

In order to avoid such claims being brought or joined by the employer, the contract between the parties stipulates that the insured employer will waive rights of recovery against the other firm if the insured's employees are injured on the job.

The workers' compensation policy grants the insurer an unlimited right of subrogation.

**We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.**

There is no provision for waiver of subrogation in the unendorsed workers' compensation policy, because the subrogation provision does not include the classic "after loss" language that allows waivers without the carrier's permission in other lines. Unlike the CGL and BAP, subrogation under the workers' compensation policy cannot be waived without the carrier's permission. Waiver of subrogation must be provided by endorsement – WC 42 03 04 (Texas Waiver of Our Right to Recover From Others) for operations in Texas or WC 00 03 13 (Waiver of Our Right to Recover From Others) for work in other states:

**We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us. This benefit shall not operate directly or indirectly to benefit anyone not named in the Schedule.**

Keep in mind, though, that just because a waiver of subrogation is permitted by manual rule, and required by the general contractor, the insurer may not be compelled to do so.

Whether or not the insured can waive the insurer's right of subrogation is often governed by state law. Texas law permits such waivers, but other states do not. Whether a waiver is possible may also depend on the relationship between the injured party and the customer at the time of the accident, along with the unique circumstances of the situation. The typical contractual provision requires that subrogation be waived "to the extent provided by law" so that, if permitted, there will be no subrogation when the endorsement is attached.

## TASK FORCE RECOMMENDATIONS – WAIVER OF SUBROGATION

1. Use the sample wording in Exhibit #8 when a waiver of subrogation endorsement isn't attached to a policy in accordance with the certificate holder's requirements.
2. When a policy doesn't include a blanket waiver of subrogation endorsement, request the appropriate endorsement from the company and obtain written confirmation that the endorsement has been or is being issued before releasing a certificate of insurance. Check the "SUBR WVD" box on the certificate.
3. Use the sample wording in Exhibit #9 when you know the waiver of subrogation endorsement doesn't match the certificate holder's requirements.
4. Use the sample wording in Exhibit #10 when the policy includes a blanket automatic waiver of subrogation endorsement. Do not check the "SUBR WVD" box on the certificate.
5. Attach copies of the waiver endorsements to the certificate.

### **Exhibit #8: Sample wording to certificate holder when a waiver of subrogation endorsement is not attached to the policy in accordance with the certificate holder's requirements.**

The insurance company does not allow a waiver of subrogation endorsement on the [ ] policy.

### **Exhibit #9: Sample wording to certificate holder when the waiver of subrogation endorsement doesn't match the certificate holder's requirements.**

Due to filing requirements of the Texas Department of Insurance, the insurance company is only permitted to use waiver of subrogation endorsement # (number, edition date).

### **Exhibit #10: Sample wording to certificate holder when the policy includes a blanket waiver of subrogation endorsement.**

The [ ] policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

# NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS

The most frequent error committed by agents on certificates of insurance is committing the agency or the company to send a notice of cancellation to the certificate holder. Under the prior editions of the ACORD 25 (2001/08 and earlier), the agency generally entered a number of days in the cancellation section.

The later editions of the ACORD 25 (2009/09 and later) fixed this problem by simply stating the policies will be cancelled and notice delivered in accordance with policy provisions:

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH POLICY PROVISIONS.

The insurance policies say that only the first named insured (and sometimes lien holders) will receive notice of cancellation. If the certificate holder insists on receiving a notice, the policy must be endorsed. The appropriate standard endorsements for this purpose are:

- Commercial General Liability: CG 02 05 (Amendment of Cancellation Provisions or Coverage Change)
- ISO Business Auto: CA 02 44 (Texas Cancellation Provision or Coverage Change) (NOTE: ISO withdrew this endorsement from its portfolio of approved forms in 2011.)
- Texas Business Auto: TE 99 01 (Additional Insured) allows for 10 day notice of any cancellation for the additional insured named in the endorsement.
- Workers' Compensation: WC 42 06 01 (Texas Notice of Material Change)

Some certificate holders take the request a step further and want notice if the policy is not renewed or is materially changed during the policy period. There is no standard endorsement to provide notice of non-renewal. If the certificate holder insists on this provision, the insurer will generally have to "manuscript" an endorsement. Few companies are willing to do this.

## Blanket Notice of Cancellation Endorsements

Some insurance companies have developed "blanket" notice of cancellation endorsements. With this form attached, the company agrees to send notice of cancellation to a list of certificate holders supplied by the agency. These forms are not standard and should be reviewed carefully to determine exactly what role the agency must serve in the process, and what conditions must exist in order for certificate holders to be furnished notice of cancellation (e.g., all cancellations or all except cancellations for nonpayment of premium). These forms generally do not provide for notice of cancellation to the certificate holder when the insured cancels the policy.

## **TASK FORCE RECOMMENDATIONS – NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS**

1. If the certificate holder insists on receiving notice, request the appropriate endorsement from the insurer and obtain written confirmation that the endorsement has been or is being issued before releasing a certificate of insurance. Use the sample wording in Exhibit #11 when an endorsement is attached.
2. If the insurer declines to provide the requested endorsement and says it won't send notice of cancellation to certificate holders, use the transmittal wording in Exhibit #12.
3. When a policy is canceled, verify that the company has notified certificate holders, whether the policy requires it to do so or not. If it has not, for the sake of courtesy as well as E&O claim avoidance, send a letter (or a copy of the certificate with a "CANCELED" stamp on it) to the certificate holders to advise them that the policy has been canceled. (Note: this applies only if the policy is truly canceled and you are not expecting reinstatement; don't feel obligated to notify certificate holders every time the premium finance company sends out a notice of intent to cancel.)
4. If the policy includes a blanket notice of cancellation endorsement, use the sample wording in Exhibit #13 to disclose the details of notice conditions.

### **Exhibit #11: Sample wording to certificate holder when the insurer provides a cancellation endorsement.**

The policy includes an endorsement providing that \_\_\_ days' notice of cancellation [or coverage change] will be furnished to the certificate holder.

### **Exhibit #12: Sample wording to certificate holder when the insurer declines to provide a cancellation endorsement and says it won't send notice of cancellation to certificate holders.**

The insurance company will not provide notice of cancellation to certificate holders.

### **Exhibit #13: Sample wording to certificate holder when the policy includes a blanket notice of cancellation endorsement.**

The [ ] policy includes a blanket notice of cancellation to certificate holders endorsement, providing for [ ] days' advance notice if the policy is canceled by the company other than for nonpayment of premium, [ ] days' notice after the policy is canceled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company. The endorsement does not provide for notice of cancellation if the named insured requests cancellation.



# THE BOX

Description of Operations / Locations / Vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The empty box on the ACORD Certificate of Liability Insurance and the ACORD 101 Additional Remarks Schedule have long been used, misused and abused by agents while attempting to satisfy the demands of certificate holders.

Senate Bill 425 does not specifically address or prohibit additional remarks added to the certificate in the Description box. However, the law does provide general guidelines for the additional remarks, and the TDI rules approved in March 2013 clarify the law with regard to information that may be contained in a filed certificate of insurance or required when requesting a certificate of insurance.

## The Law and Rules – Prohibitions for Agents and Certificate Holders

- Agents are prohibited from issuing a certificate that alters, amends or extends the coverage or terms and conditions provided by the insurance policy.
- Certificate holders are prohibited from requiring an agent to issue a certificate that contains false or misleading information concerning the insurance policy.
  - ◆ Requests for information on the certificate from must be specific, clear and reasonable.
  - ◆ Any explanatory information included in a completed certificate is limited to language in the referenced policy and any executed endorsements.
- Agents are prohibited from issuing a certificate that confers to a certificate holder new or additional rights beyond what the insurance policy provides.
- Agents are prohibited from issuing a certificate that contains a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance.
  - ◆ A certificate may refer to the language in the underlying contract of insurance.
  - ◆ A certificate may not refer to, describe, explain or define obligations under a contract other than the underlying contract of insurance.
- A certificate may not alter the terms and conditions of a right to notice of cancellation, nonrenewal or material change or any similar notice concerning a policy of insurance required by the insurance policy or Texas law.
  - ◆ A certificate may not create a new or additional duty to notify.
  - ◆ Any statement on a certificate regarding an existing duty to notify is limited to language in the referenced policy and any executed endorsements.

## TASK FORCE RECOMMENDATIONS – THE BOX

1. Use the Description box to provide a description of operations, locations or vehicles as noted on the form.
2. Use the Description box and ACORD 101 to disclose specific coverage or exclusion endorsements that are attached to the policy to address a certificate holder's requirements. Use the form number and exact title only – do not try to summarize the coverage or exclusion. Use the sample wording in this publication where applicable.
3. Use the Description box and ACORD 101 (or a separate document like a transmittal letter) to provide explanations and disclosures, using the sample wording in this publication where applicable.
4. Do not add words or phrases in the Description box or on ACORD 101 that reflect or imply coverages or conditions not explicitly granted by the policies.
5. Use the sample wording in Exhibit #14 when the certificate holder requests special wording on the certificate that would (1) alter, amend or extend coverage or terms and conditions provided by the insurance policy; or (2) provide false or misleading information concerning the insurance policy; or (3) refer to a legal or insurance requirement contained in a contract. Add wording after this statement (using the sample wording in this publication where applicable) to address specific items requested by the certificate holder that you can't fulfill.

**Exhibit #14: Sample wording to certificate holder when the certificate holder requests special wording on the certificate that would (1) alter, amend or extend coverage or terms and conditions provided by the insurance policy; or (2) provide false or misleading information concerning the insurance policy; or (3) refer to a legal or insurance requirement contained in a contract.**

We have issued an industry-standard ACORD certificate of insurance for our customer. A law passed by the Texas Legislature effective January 1, 2012 (Senate Bill 425) prohibits us from adding special wording to the certificate that would (1) alter, amend or extend coverage or terms and conditions provided by the insurance policy; or (2) provide false or misleading information concerning the insurance policy; or (3) refer to a legal or insurance requirement contained in a contract. The remarks shown below address specific items you requested. For more information regarding the law, please go to this website: [www.tdi.texas.gov/certificates](http://www.tdi.texas.gov/certificates)

# SENDING CERTIFICATES TO COMPANIES

Many insurers and wholesalers say they don't want to see certificates of insurance issued by the agency. Task Force members believe this is a short-sighted approach. Insurers can determine a great deal about an account by reviewing issued certificates.

## **TASK FORCE RECOMMENDATIONS – SENDING CERTIFICATES TO COMPANIES**

1. Agents should send certificates of insurance to insurers, even after the insurer says it doesn't want them. If the insurer returns certificates to the agency, the agent should document the file accordingly.

# REVIEWING CONTRACTS FOR INSUREDS

As every E&O attorney knows, there are a sizeable number of E&O claims against agents that arise out of the agent trying to do a favor for an insured. For agents that insure contractors, that “favor” often involves reading or reviewing contracts signed by the contractor. Many agents review other kinds of contracts, such as property leases.

Agents are caught in a Catch-22 when reviewing contracts signed by policyholders. To run from the task would call into question the agent’s professional service. On the other hand, to tackle the project with no written guidelines or disclaimers could be disastrous for the agent and agency. The most commonsense approach, and one that is recommended by E&O attorneys, is the middle ground: review the contracts with disclosures and disclaimers.

Of primary importance is to state in writing that the agent is only reviewing the insurance requirements of the contract and is not providing legal advice.

A disclaimer should be provided at least annually to policyholders for which the agent frequently and routinely reviews contracts. For situations where a contract review is done only infrequently, it is recommended that the disclaimer be provided to the policyholder each time. E&O experts who favor a conservative approach recommend using the written disclaimer each time a contract is reviewed, no matter how many contracts are reviewed for a policyholder each year.

## **TASK FORCE RECOMMENDATIONS – REVIEWING CONTRACTS FOR INSUREDS**

1. Use the sample language in Exhibit #15 when presenting your findings following a contract review of insurance specifications.

**Exhibit #15: Sample wording to insured when presenting your findings following a contract review of insurance specifications.**

Our agency has, upon your request, reviewed the contract indicated above. Specifically, we reviewed only the insurance requirements as contained in Section \_\_\_\_, Page \_\_\_\_.

The scope of our review was to determine if the current insurance program which you have placed through our agency addresses the types and amounts of insurance coverage referenced by the contract. We have identified the significant insurance obligations, and have attached a summary of the changes required in your current insurance program to meet the requirements of the contract. Upon your authorization, we will make the necessary changes.

We will also be available to discuss any insurance requirements of the contract with your attorney, if desired.

In performing this review, our Agency is not providing legal advice or a legal opinion concerning any portion of the contract. In addition, our Agency is not undertaking to identify all potential liabilities that may arise under this contract. This review is provided for your information, and should not be relied upon by third parties. Any descriptions of the insurance coverages are subject to the terms, conditions, exclusions and other provisions of the policies and any applicable regulations, rating rules or plans.

# AUTOMATED CERTIFICATE SYSTEMS

## Agency Automation Systems and Certificates

Agency automation systems have made the issuance of certificates a relatively easy task for most agencies. Perhaps too easy.

When setting up certificates on your agency management system, you should follow the basic procedures and recommendations detailed in this publication.

Most systems permit the administrator to limit access to the certificates function to specific users and to customize the level of access to specific functions.

### **TASK FORCE RECOMMENDATIONS – AGENCY AUTOMATION SYSTEMS AND CERTIFICATES**

1. Review your agency management system authorization levels and limit access to the certificate function to specific users. Customize the level of access to specific functions in order to minimize the risk of unauthorized access and use.
2. One person in management should review system reports of certificate issuance on a monthly basis in order to detect any unusual or unauthorized access or use.

## Providing Customer Access to Certificates

This article was reprinted with permission of The Automated Agency Report ([www.taareport.com](http://www.taareport.com)). The article refers to one vendor providing automated certificate access for customers. The comments in general apply to all such products from other vendors.

A recent survey commissioned by IIABA provides strong evidence that clients want to use the Internet as a way to interact with us. When asked how important online access to account information was when deciding who they would purchase their insurance from, 59 percent of personal lines consumers and 47 percent of small business consumers said it was very or extremely important. When agents were asked the same question, only 6 percent thought it was important to their clients. Your clients want to be able to use the Internet to do business with you. Are you ready?

An easy place for any agency to start providing self-service options for their clients is with Certificates of Insurance. Certificates are a non-revenue generating activity for agents and a constant source of irritation for clients who can't get them when they need them. Agents who are already allowing clients to issue their own certificates tell us that clients really like the ability to get certificates when they need them, not just when the agent's office is open. This type of self-service gives agents and brokers a competitive advantage by providing 24x7 service without additional staff.

ConfirmNet's CertificatesNow service is a good example of how to use the power of the Internet to deliver service. The CertificatesNow service gives agents and their clients the tools necessary to manage and deliver Certificates of Insurance. The service is delivered as an ASP (Application Service Provider), which means there is no software to load on your (or your client's) computer to use the service. All that is required is an Internet

connection.

Don't worry, the agency always maintains complete control of the policy and coverage information. Clients can never change policy dates or coverage on a certificate. Agency staff creates Master Certificate templates that clients are allowed to access to add certificate holder information. The agency determines what information the client can complete. For example, in the description of operations field there are five lines of text available. When the CSR creates the master, she determines if any boilerplate text is included (that the client can't change) and how many (if any) of the five lines are available for the client to complete.

The service also allows you to attach any required ISO endorsement forms to the certificate when it is delivered. The agency can choose to receive an email notification whenever a client completes a certificate so the activity can be tracked. You can even automatically send a copy of the certificate to the insurance company as an attachment to an email.

Every certificate issued is maintained in a database and can be retrieved at any time to view or resend if necessary. Three delivery options are available: email with an Adobe Acrobat file as an attachment, fax, and U.S. mail. Being able to send paper certificates sets this service apart. Users of the service will find online screens that look similar to the paper forms they use today, with added capabilities to modify form fields or add custom fields. ConfirmNet is working with several agency management system vendors to allow insured and certificate holder information to be shared to eliminate double entry of this information.

An agency should also consider using the service to replace its current internal certificate processing. CertificatesNow greatly simplifies and streamlines processing renewal certificates both for the agency and their clients. To send renewals, the agency simply updates the policy information on the existing certificates using a "renewal" process. Then the agency or the client updates the certificate holder list. With a click on the "Renewal" button, all certificates are created and delivered using the delivery method selected for each holder. Certificate parties are a thing of the past! This can literally save hours of work for every renewal with a large number of certificates.

#### **TASK FORCE RECOMMENDATIONS – PROVIDING CUSTOMER ACCESS TO CERTIFICATES**

1. Make only one line in the DESCRIPTION section available for customer use and instruct customers it is to be used only for project numbers or similar information to identify the job.

# CERTIFICATES ON POLICIES WRITTEN THROUGH WHOLESALERS

(The following information was reproduced from the IIAT publication, Best Practices for Working Relationships Between Wholesalers and Retailers.)

When a certificate of insurance is needed on a policy written through a wholesaler, an entirely new set of issues arises for the retail agent.

(Note: For the purpose of this publication, the term “wholesaler” means any insurance entity that serves as an intermediary between a “retailer” – an agency that has direct contact with an insurance policyholder or prospect – and the insurance company that serves as the risk-taker on an insurance policy. Wholesalers are known by a variety of titles, both by themselves and the rest of the insurance industry, including broker, managing general agent, surplus lines agent or broker, and program underwriting manager. In this context, it can even mean a retail agent that allows another retail agent to “broker” a policy with the former, because the latter doesn’t have a market for the account.)

Many wholesalers do not have the authority to issue certificates of insurance for at least some of the companies they represent. In conversations with several wholesalers, the Task Force learned that some wholesalers do not issue certificates because they don’t want to – they either refuse to provide certificate service or they tell the retailer to issue certificates as needed.

Some retailers apparently are under the mistaken impression that they have the authority to issue certificates of insurance on business written through wholesalers, when in fact they do not.

Another complication in the area of certificates is Rule 19.905 in the Texas Administrative Code:

## **Texas Administrative Code - Chapter 19, Rule 19.905**

When a licensed local recording agent who does not have an appointment from a particular insurance company has referred an application for insurance to a local recording agent or managing general agent who does have an appointment with that company and the referral has resulted in the issuance of a policy of insurance written by that company, the agent who has the appointment may share the commission with the agent who does not have an appointment. The local recording agent, without an appointment from the company which takes the risk or issues a policy, may prepare an application for insurance, may collect and remit premium due to the agent issuing any such policy, and may deliver the policy and any endorsements to the insured and shall as to such activities be regarded as the agent of the insured and shall not be considered to be the agent of the company for any purpose. Upon making such referral, the local recording agent without an appointment from the company which takes the risk shall make written disclosure to the insured that such agent is not authorized to bind coverage or to execute or issue a policy for the subject risk. An agent without an appointment from a particular insurer may not sign or execute policies or issue binders, endorsements, or any other indication of coverage on behalf of that insurer.

Based on this rule, a retailer is never authorized to sign or issue certificates of insurance unless the agent or agency has an appointment with the insurance company.

With regard to business placed with a surplus lines insurer, the Texas Department of Insurance provided the following statement in a recent bulletin:

**Agents should not sign certificates of insurance or other documents evidencing coverage issued by an eligible surplus lines insurer unless the agent holds a surplus lines license.**

The ACORD instruction guide includes the following statement concerning the Authorized Representative section of the certificate:

**Sign here. Accommodates the signature of the authorized representative (e.g., producer, agent, broker, etc.) by all companies listed on the document. This is required in most states.**

## **TASK FORCE RECOMMENDATIONS – CERTIFICATES ON POLICIES WRITTEN THROUGH WHOLESALERS**

1. Retailers should not issue certificates on policies written through wholesalers without written authorization from the wholesaler or the insurer.
2. An agent should not sign a certificate of insurance on a surplus lines policy unless the agent has a surplus lines license.
3. Retailers should take the initiative to ask wholesalers about certificate procedures on each account.
4. The Task Force acknowledges the wide variance of current practices among wholesalers and retailers regarding issuance of certificates of insurance. The retail members of the Task Force believe that wholesalers are responsible for furnishing certificates of insurance to retailers in a timely manner upon request. The wholesale members of the Task Force are reluctant to recommend any single Best Practice that some wholesalers could not or would not perform. Accordingly, the Task Force developed the following optional recommendations, shown below in the order of preference:
  1. Wholesaler issues a master certificate on the account at the time it is written, completes a specific certificate with job-specific data when requested by the retailer, and faxes, e-mails or mails the completed certificate to the retailer within 24 hours of request.
  2. Retailer issue certificates as needed and faxes or e-mails to wholesaler for signature. Wholesaler faxes, e-mails or mails the signed certificate to the retailer within 24 hours of request.
  3. Wholesaler gives retailer written authority to issue certificates, either on a general or specific basis. Retailer sends copy of completed certificate to wholesaler.
  4. Wholesaler gives retailer oral authority to issue certificates on a specific basis. Retailer confirms this oral authority in writing to the wholesaler. Retailer sends copy of completed certificate to wholesaler.

# CHARGING FEES FOR CERTIFICATES

One agency management consultant has estimated the cost of preparing a single certificate can be as high as \$7, even when the certificate is prepared on the agency’s automated management system. If an account needs hundreds of certificates each year, it’s easy to see that the commission earned on such an account can be quickly consumed. An agency should consider the feasibility of charging fees to policyholders to offset the cost of issuing certificates.

Some agency managers are reluctant to charge fees for certificates. They consider certificate issuance to be a cost of doing business which is compensated by the commission earned on an account. But face it: an account that produces \$1,000 in commission income for the agency and requires 100 certificates each year receives the same service as an account that produces \$10,000 in commission income and also requires 100 certificates each year. But the agency is actually losing money on the smaller account. Why would an agency manager put up with that? The alternative is to decline to write the smaller account and risk an unwanted reputation in the community. It is not unfair to ask a business to pay a small fee for the service he needs to run the business.

One way to look at a fee schedule is to base the charge on the account or policy premium. (If you’re going to publish your fee schedule or share it with policyholders, it’s probably best to base it on premium, rather than commission income.) For example, consider the following fee schedule:

Premium Size	Cost per certificate based on number of certificates issued annually			
	1 - 10	11 - 50	51 - 100	Over 100
\$1 - 100,000	No charge	\$10	\$10	\$10
\$100,001 – 250,000	No charge	No charge	\$10	\$10
\$250,001 – 500,000	No charge	No charge	No charge	\$10
Over \$500,000	No charge	No charge	No charge	No charge

The Texas Insurance Code and TDI rules permit agents to charge fees for services not contemplated in the commission received on the account. When an agent charges a fee for services and also receives commission paid by the insurer or other third party (including compensation received under contingent commission or profit sharing agreements), the agent must disclose this fact and obtain the customer’s documented acknowledgment before the insurance is purchased. The disclosure must provide a description of the methods and factors used to compute the compensation to be received from the insurer or other third party. The IIAT Sample Disclosure Form (available in the Agency Management section at [www.iiat.org](http://www.iiat.org)) includes the information needed to comply with this law. The fee for certificate issuance is not subject to sales tax.

## **TASK FORCE RECOMMENDATIONS – CHARGING FEES FOR CERTIFICATES**

1. Consider charging fees for accounts that request an excessive number of certificates compared to the commission earned on the account.
2. Follow TDI rules regarding charging fees, including the requirement to obtain the customer's written consent prior to charging the fees.

# Appendix

	PAGE
Commissioner’s Bulletin No. B0035-06_____	A-2
Text of Senate Bill 425 – Texas Insurance Code, Title 10, Subtitle A, Chapter 1811_____	A-3
Text of Texas Administrative Code section 5.9370 – 5.9376_____	A-16
Certificare of Insurance Checklist_____	A-22

September 8, 2006

**TO: ALL COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALLS, ASSOCIATIONS, LLOYDS, OR OTHER INSURERS WRITING PROPERTY AND CASUALTY INSURANCE, INCLUDING WORKERS' COMPENSATION INSURANCE, IN THE STATE OF TEXAS; AGENTS AND REPRESENTATIVES; AND THE PUBLIC GENERALLY**

**RE: CERTIFICATES OF INSURANCE**

The Department reminds all carriers and agents that a certificate of insurance must clearly and accurately state the insurance coverage provided. A certificate of insurance that obscures or misrepresents the insurance coverage provided under the insurance policy is a violation of the Insurance Code, including §§541.051, 541.061, and 4005.101(b)(5) and (6). Additionally, agents are reminded that they are prohibited from altering the terms or conditions of a policy under Insurance Code §§4001.051(c) and 4001.052(b). Violation of the provisions of Chapter 541, 4001, or 4005 may result in administrative penalties and/or license revocation.

The Department is issuing this bulletin because it has received information that indicates some certificates of insurance provided to contractors are either obscure as to the types of coverage contained in the policy or misrepresent the coverage under the policy.

As provided in the Department's previously issued General Casualty Bulletin No. 369, Automobile Series No. 417, and W.C. Circular Letter No. 392, dated February 1, 1968, the Department again highlights sample language that may be used on each certificate of insurance issued:

In compliance with Texas law, this Certificate of Insurance  
  
neither amends, extends, or alters any term or condition of the  
  
coverage afforded by Policy No. \_\_\_\_\_ issued by  
  
\_\_\_\_\_ on \_\_\_\_\_ (date).

Instances of a company or agent issuing or executing a certificate of insurance that obscures or misrepresents coverage under the insurance policy should be reported to the Consumer Protection Division of the Texas Department of Insurance at 1-800-252-3439 or [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us).

Questions regarding this bulletin may be directed to David Nardecchia, CPCU, Director, Personal and Commercial Lines Division at [David.Nardecchia@tdi.state.tx.us](mailto:David.Nardecchia@tdi.state.tx.us).

Link for: General Casualty Bulletin No. 369

Mike Geeslin  
Commissioner of Insurance  
For more information contact: [ChiefClerk@tdi.state.tx.us](mailto:ChiefClerk@tdi.state.tx.us)

1 AN ACT  
2 relating to property and casualty certificates of insurance and  
3 approval of property and casualty certificate of insurance forms by  
4 the Texas Department of Insurance; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle A, Title 10, Insurance Code, is amended  
7 by adding Chapter 1811 to read as follows:

8 CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 1811.001. DEFINITIONS. In this chapter:

11 (1) "Agent" means a person required to hold a license  
12 as a property and casualty agent or surplus lines agent.

13 (2) "Certificate holder" means a person, other than a  
14 policyholder:

15 (A) who is designated on a certificate of  
16 insurance as a certificate holder; or

17 (B) to whom a certificate of insurance has been  
18 issued by an insurer or agent at the request of the policyholder.

19 (3) "Certificate of insurance" means a document,  
20 instrument, or record, including an electronic record, no matter  
21 how titled or described, that is executed by an insurer or agent and  
22 issued to a third person not a party to the subject insurance  
23 contract, as a statement or summary of property or casualty  
24 insurance coverage. The term does not include an insurance binder

1 or policy form.

2 (4) "Electronic record" has the meaning assigned by  
3 Section 322.002, Business & Commerce Code.

4 (5) "Insurance" means an insurance contract for  
5 property or casualty insurance.

6 (6) "Insurer" means a company or insurance carrier  
7 that is engaged in the business of making property or casualty  
8 insurance contracts. The term includes:

9 (A) a stock fire or casualty insurance company;

10 (B) a mutual fire or casualty insurance company;

11 (C) a Mexican casualty insurance company;

12 (D) a Lloyd's plan;

13 (E) a reciprocal or interinsurance exchange;

14 (F) a county mutual insurance company;

15 (G) a farm mutual insurance company;

16 (H) a risk retention group;

17 (I) the Medical Liability Insurance Joint  
18 Underwriting Association under Chapter 2203;

19 (J) the Texas Windstorm Insurance Association  
20 under Chapter 2210;

21 (K) the FAIR Plan Association under Chapter 2211;

22 (L) an eligible surplus lines insurer; and

23 (M) any other insurer authorized to write  
24 property or casualty insurance in this state.

25 (7) "Lender" has the meaning assigned by Section  
26 549.001.

27 (8) "Person" means:

1                   (A) an individual; or

2                   (B) a partnership, corporation, limited  
3 liability company, association, trust, or other legal entity,  
4 including an insurer or a political subdivision or agency of this  
5 state.

6                   (9) "Policyholder" means a person who has contracted  
7 with a property or casualty insurer for insurance coverage.

8                   (10) "Record" has the meaning assigned by Section  
9 322.002, Business & Commerce Code.

10                  Sec. 1811.002. APPLICABILITY. (a) This chapter applies to  
11 a certificate holder, policyholder, insurer, or agent with regard  
12 to a certificate of insurance issued on property or casualty  
13 operations or a risk located in this state, regardless of where the  
14 certificate holder, policyholder, insurer, or agent is located.

15                  (b) This chapter may not be construed to apply to:

16                   (1) a statement, summary, or evidence of property  
17 insurance required by a lender in a lending transaction involving:

18                           (A) a mortgage;

19                           (B) a lien;

20                           (C) a deed of trust; or

21                           (D) any other security interest in real or  
22 personal property as security for a loan;

23                   (2) a certificate issued under:

24                           (A) a group or individual policy for:

25                                   (i) life insurance;

26                                   (ii) credit insurance;

27                                   (iii) accident and health insurance;

- 1                    (iv) long-term care benefit insurance; or
- 2                    (v) Medicare supplement insurance; or
- 3                    (B) an annuity contract; or
- 4                    (3) standard proof of motor vehicle liability
- 5 insurance under Section 601.081, Transportation Code.

6                    Sec. 1811.003. RULES. The commissioner may adopt rules as

7 necessary or proper to accomplish the purposes of this chapter.

8                    Sec. 1811.004. FILING FEE. (a) The department may collect

9 a fee in an amount determined by the commissioner for the filing of

10 a new or amended certificate of insurance form under this chapter.

11                    (b) The fee may not exceed \$100.

12                    (c) A fee collected under this section shall be deposited to

13 the credit of the Texas Department of Insurance operating account.

14                    [Sections 1811.005-1811.050 reserved for expansion]

15                    SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

16                    Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS

17 OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER.

18                    (a) A property or casualty insurer or agent may not issue a

19 certificate of insurance or any other type of document purporting

20 to be a certificate of insurance if the certificate or document

21 alters, amends, or extends the coverage or terms and conditions

22 provided by the insurance policy referenced on the certificate or

23 document.

24                    (b) A certificate of insurance or any other type of document

25 may not convey a contractual right to a certificate holder.

26                    Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE

27 FORMS. (a) An insurer or an agent may not issue a certificate of

1 insurance unless the form of the certificate:

2 (1) has been filed with and approved by the department  
3 under Section 1811.101; or

4 (2) is a standard form deemed approved by the  
5 department under Section 1811.103.

6 (b) A person may not execute, issue, or require the issuance  
7 of a certificate of insurance for risks located in this state,  
8 unless the certificate of insurance form has been filed with and  
9 approved by the department.

10 Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED  
11 CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a  
12 certificate of insurance form approved under Section 1811.101  
13 unless the alteration or modification is approved by the  
14 department.

15 Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE  
16 OF INSURANCE. A person may not require the issuance of a  
17 certificate of insurance from an insurer, agent, or policyholder  
18 that contains any false or misleading information concerning the  
19 policy of insurance to which the certificate refers.

20 Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE  
21 OF INSURANCE. A person may not require an agent or insurer, either  
22 in addition to or in lieu of a certificate of insurance, to issue  
23 any other document or correspondence, instrument, or record,  
24 including an electronic record, that is inconsistent with this  
25 chapter.

26 Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE  
27 FORMS. A person who receives written notice under Section 1811.102

1 that a certificate of insurance form filed under this chapter has  
2 been disapproved by the commissioner shall immediately stop using  
3 the form.

4 [Sections 1811.057-1811.100 reserved for expansion]

5 SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

6 Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except  
7 as provided by Subsection (b), an insurer or agent may not deliver  
8 or issue for delivery in this state a certificate of insurance  
9 unless the certificate's form:

10 (1) has been filed with and approved by the  
11 commissioner; and

12 (2) contains the phrase "for information purposes  
13 only" or similar language.

14 (b) If a certificate of insurance form does not contain the  
15 language required by Subsection (a)(2), the commissioner may  
16 approve the form if the form states:

17 (1) that the certificate of insurance does not confer  
18 any rights or obligations other than the rights and obligations  
19 conveyed by the policy referenced on the form; and

20 (2) that the terms of the policy control over the terms  
21 of the certificate of insurance.

22 (c) A filed form is approved at the expiration of 60 days  
23 after the date the form is filed unless the commissioner by order  
24 approves or disapproves the form during the 60-day period beginning  
25 the date the form is filed. The commissioner's approval of a filed  
26 form constitutes a waiver of any unexpired portion of the 60-day  
27 period.

1       (d) The commissioner may extend by not more than 10 days the  
2 60-day period described by Subsection (c) during which the  
3 commissioner may approve or disapprove a form filed by an insurer or  
4 agent. The commissioner shall notify the insurer or agent of the  
5 extension before the expiration of the 60-day period.

6       (e) A filed form for which an extension has been granted  
7 under Subsection (d) is considered approved at the expiration of  
8 the extension period described by that subsection absent an earlier  
9 approval or disapproval of the form.

10       (f) A person may not use a form unless the form has been  
11 filed with and approved by the commissioner.

12       Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF  
13 APPROVAL. (a) The commissioner shall disapprove a form filed  
14 under Section 1811.101 or withdraw approval of a form if the form:

15               (1) contains a provision or has a title or heading that  
16 is misleading, is deceptive, or violates public policy;

17               (2) violates any state law, including a rule adopted  
18 under this code;

19               (3) requires an agent to provide certification of  
20 insurance coverage that is not available in the line or type of  
21 insurance coverage referenced on the form; or

22               (4) directly or indirectly requires the commissioner  
23 to make a coverage determination under a policy of insurance or  
24 insurance transaction.

25       (b) The commissioner may not disapprove a form filed under  
26 Section 1811.101 or withdraw approval of a form based solely on the  
27 fact that the form contains language described by Section

1 1811.101(b).

2 (c) An order issued by the commissioner disapproving a form,  
3 or a notice of the commissioner's intention to withdraw approval of  
4 a form, must state the grounds for the disapproval or withdrawal of  
5 approval in sufficient detail to reasonably inform the person  
6 filing the form of those grounds and the changes to the form  
7 necessary to obtain approval.

8 (d) An order disapproving a form or withdrawing approval of  
9 a form takes effect on the date prescribed by the commissioner in  
10 the order. An order withdrawing approval of a form may not become  
11 effective until the 30th day after the date of the order.

12 Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A  
13 standard certificate of insurance form promulgated by the  
14 Association for Cooperative Operations Research and Development,  
15 the American Association of Insurance Services, or the Insurance  
16 Services Office (ISO) is deemed approved on the date the form is  
17 filed with the department. Notwithstanding this section, the  
18 commissioner may withdraw approval of a standard form under Section  
19 1811.102.

20 Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A  
21 certificate of insurance form and any supporting information filed  
22 with the department under this subchapter is open to public  
23 inspection as of the date of the filing.

24 [Sections 1811.105-1811.150 reserved for expansion]

25 SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

26 Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A  
27 certificate of insurance form that has been approved by the

1 commissioner and properly executed and issued by a property and  
2 casualty insurer or an agent constitutes a confirmation that the  
3 referenced insurance policy has been issued or that coverage has  
4 been bound. This section applies regardless of whether the face of  
5 the certificate includes the phrase "for information purposes only"  
6 or similar language.

7 Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF  
8 INSURANCE. A certificate of insurance is not a policy of insurance  
9 and does not amend, extend, or alter the coverage afforded by the  
10 referenced insurance policy.

11 Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF  
12 INSURANCE. A certificate of insurance shall not confer to a  
13 certificate holder new or additional rights beyond what the  
14 referenced policy or any executed endorsement of insurance  
15 provides.

16 Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate  
17 of insurance may not contain a reference to a legal or insurance  
18 requirement contained in a contract other than the underlying  
19 contract of insurance, including a contract for construction or  
20 services.

21 Sec. 1811.155. NOTICE. (a) A person may have a legal right  
22 to notice of cancellation, nonrenewal, or material change or any  
23 similar notice concerning a policy of insurance only if:

24 (1) the person is named within the policy or an  
25 endorsement to the policy; and

26 (2) the policy or endorsement or a law, including a  
27 rule, of this state requires notice to be provided.

1           (b) A certificate of insurance may not alter the terms and  
2 conditions of the notice required by a policy of insurance or the  
3 law of this state.

4           Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION  
5 OF CHAPTER. A certificate of insurance that is executed, issued, or  
6 required and that is in violation of this chapter is void and has no  
7 effect.

8           [Sections 1811.157-1811.200 reserved for expansion]

9                           SUBCHAPTER E. ENFORCEMENT AND REMEDIES

10           Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the  
11 commissioner has reason to believe that an insurer or agent has  
12 violated or is threatening to violate this chapter or a rule adopted  
13 under this chapter, the commissioner may:

14                   (1) issue a cease and desist order;

15                   (2) seek an injunction under Section 1811.203;

16                   (3) request that the attorney general recover a civil  
17 penalty under Section 1811.203;

18                   (4) impose sanctions on the insurer or agent as  
19 provided by Chapter 82; or

20                   (5) take any combination of those actions.

21           (b) This section does not prevent or limit any action by or  
22 remedy available to the commissioner under applicable law.

23           Sec. 1811.202. HEARING; NOTICE. (a) The commissioner may  
24 hold a hearing on whether to issue a cease and desist order under  
25 Section 1811.201 if the commissioner has reason to believe that:

26                   (1) an insurer or agent has violated or is threatening  
27 to violate this chapter or a rule adopted under this chapter; or

1           (2) an insurer or agent has engaged in or is  
2 threatening to engage in an unfair act related to a certificate of  
3 insurance.

4           (b) The commissioner shall serve on the insurer or agent a  
5 statement of charges and a notice of hearing in the form provided by  
6 Section 2001.052, Government Code.

7           (c) A hearing under this section is a contested case under  
8 Chapter 2001, Government Code.

9           Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) A person,  
10 including an insurer or agent, who wilfully violates this chapter  
11 is subject to a civil penalty of not more than \$1,000 for each  
12 violation.

13           (b) The commissioner may request that the attorney general  
14 institute a civil suit in a district court in Travis County for  
15 injunctive relief to restrain a person, including an insurer or  
16 agent, from continuing a violation or threat of violation of  
17 Subchapter B. On application for injunctive relief and a finding  
18 that a person, including an insurer or agent, is violating or  
19 threatening to violate Subchapter B, the district court shall grant  
20 the injunctive relief and issue an injunction without bond.

21           (c) On request by the commissioner, the attorney general may  
22 institute and conduct a civil suit in the name of the state for  
23 injunctive relief, to recover a civil penalty, or for both  
24 injunctive relief and a civil penalty, as authorized under this  
25 subchapter.

26           Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The  
27 commissioner may:

1           (1) investigate a complaint or allegation of specific  
2 violations by a person, including an insurer or agent, who has  
3 allegedly engaged in an act or practice prohibited by Subchapter B;  
4 and

5           (2) enforce the provisions of this chapter.

6           (b) If the commissioner has reason to believe that a person,  
7 including an insurer or agent, is performing an act in violation of  
8 Subchapter B, the person shall immediately provide to the  
9 commissioner, on written request of the commissioner, information  
10 relating to that act.

11           SECTION 2. The changes in law made by this Act apply only to  
12 a certificate of insurance issued on or after January 1, 2012. A  
13 certificate of insurance issued before January 1, 2012, is governed  
14 by the law in effect immediately before the effective date of this  
15 Act, and that law is continued in effect for that purpose.

16           SECTION 3. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 425 passed the Senate on March 17, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 425 passed the House, with amendments, on May 23, 2011, by the following vote: Yeas 143, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# Texas Administrative Code, Title 28, Subchapter M, Division 11

## **§5.9370.Purpose and Scope.**

- (a) This division specifies the filing requirements for certificates of property and casualty insurance submitted pursuant to Chapter 1811 of the Insurance Code. It also consolidates and explains the restrictions that apply to the content of certificates of insurance.
- (b) Nothing in this division prohibits a certificate holder from requesting a copy of the subject policy or endorsements.
- (c) Nothing in this division applies to certificates or evidence forms exempted from the filing requirements pursuant to Insurance Code §1811.002(b), including:
  - (1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving a mortgage, lien, deed of trust, or any other security interest in real or personal property as security for a loan;
  - (2) a certificate issued under a group or individual policy for life insurance, credit insurance, accident and health insurance, long-term care benefit insurance, or Medicare supplement insurance or an annuity contract; or
  - (3) standard proof of motor vehicle liability insurance.
- (d) Nothing in this division applies to negotiable or transferable certificates or evidence forms pertaining to marine insurance.
- (e) Nothing in this division applies to a certificate or evidence form pertaining to a nonadmitted insurance policy sold to, solicited by, or negotiated with an insured whose home state is not Texas. In this subsection, "home state" has the same definition as in Insurance Code §226.051.

## **§5.9371.Definitions.**

- (a) Words and terms not defined in this division have the same meaning as in Chapter 1811 of the Insurance Code.
- (b) Unless the context indicates otherwise, this division uses the following definitions:
  - (1) Certificate of insurance – A document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form, or any document that describes insurance coverage that is merely promised or expected to exist in the future, whether titled as an affidavit, insurance verification form, or otherwise.

- (2) Certificate holder – A person, other than a policyholder, who is designated on a certificate of insurance as a certificate holder or to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.
- (3) Company – The name of the entity filing the certificate of insurance form. If a third party is filing the certificate of insurance form, the company name is the name of the entity for which the third party is filing the certificate of insurance form, not the name of the third party filer.
- (4) Commissioner – The commissioner of insurance.
- (5) TDI – The Texas Department of Insurance.
- (6) Insurance Code – The Texas Insurance Code.
- (7) FEIN – Federal Employer Identification Number.
- (8) NAIC – The National Association of Insurance Commissioners.
- (9) SERFF – The NAIC System for Electronic Rate and Form Filing.

**§5.9372.Preparation and Submission of Certificate of Insurance Form Filings.**

- (a) Approval required. A certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located, must be on a form that has been filed and approved prior to use.
- (b) Filing content. All filings for new or amended certificate of insurance forms submitted pursuant to Insurance Code Chapter 1811 must comply with the filing requirements set forth in this division, any other applicable rules the commissioner has adopted, and any applicable commissioner's orders.
  - (1) All filings must contain transmittal information as required by §5.9373 of this title (relating to Certificate of Insurance Form Filing Transmittal Information).
  - (2) All filings must contain a copy of the subject certificate of insurance form. For identification purposes, the certificate of insurance must contain a form number and edition date.
- (c) Combined filings. Do not combine a certificate of insurance form filing with any other filing.

(d) Filing submission.

- (1) TDI will accept a filing required under this division by mail. Send filings to the Texas Department of Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.
- (2) TDI will accept a filing required under this division if hand-delivered. Bring filings to the Texas Department of Insurance, Customer Service Center, 333 Guadalupe Street, William P. Hobby Jr. State Office Building, Tower 1, Room 103, Austin, Texas 78701.
- (3) TDI will accept a filing required under this division that is submitted electronically, whether by email to PCFilingsIntake@tdi.state.tx.us or through SERFF.
- (4) TDI will not collect a filing fee for a certificate of insurance filing.

(e) Public inspection of filing.

- (1) A certificate of insurance form and any supporting information filed with TDI under this division is open to public inspection as of the date of the filing.
- (2) To the extent that a filing includes company contact information, the company affirmatively consents to the release and disclosure of its company contact information, including any email addresses.

**§5.9373.Certificate of Insurance Form Filing Transmittal Information.**

(a) Required information. The filing transmittal information must be typed and must contain, at a minimum, the following:

- (1) company;
- (2) NAIC number if the filing is submitted by an insurer;
- (3) FEIN if the filing is submitted by an entity other than an insurer or agent; and
- (4) contact person, including name, telephone number, mailing address, fax number, and email address (if available).

(b) Transmittal information format.

- (1) The Certificate of Insurance Form Filing Transmittal Form is available on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov) or by request to the Texas Department of Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.
- (2) Filers may submit transmittal information in a format other than the form provided by TDI if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (a) of this section.

(c) SERFF filings. Persons filing through SERFF must follow existing procedures for SERFF filings.

#### **§5.9374. Incomplete Filings.**

- (a) A filing is incomplete if the filing does not comply with all of the filing requirements described in this division.
- (b) TDI will return an incomplete filing to the filer with a letter or electronic notification indicating the reason(s).
- (c) The 60-day period in Insurance Code §1811.101(c) does not commence until TDI receives a complete filing.

#### **§5.9375. Use of Certificate of Insurance Forms.**

- (a) A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with TDI.
- (b) An authorized user may use a company's approved certificate of insurance form or a standard certificate of insurance form as evidence of property and casualty insurance coverage without making a separate filing.
- (c) An authorized user is:
  - (1) any person authorized by the company or the company's designee to use the company's approved certificate of insurance form; or
  - (2) any person authorized by ACORD, AAIS, or ISO to use the appropriate standard certificate of insurance form.

## **§5.9376.Restrictions on the Content of Certificates of Insurance.**

- (a) Required language. A certificate of insurance must contain the phrase "for information purposes only" or similar language, or state that:
  - (1) the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and
  - (2) the terms of the policy control over the terms of the certificate of insurance.
- (b) Specific limitations.
  - (1) A certificate of insurance may not amend, extend, or alter the coverage afforded by the referenced insurance policy.
  - (2) A certificate of insurance may not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides.
  - (3) A certificate of insurance may not alter or modify a certificate of insurance form approved by TDI unless TDI approves the alteration or modification.
  - (4) A certificate of insurance may not contain false or misleading information concerning the referenced insurance policy.
    - (A) Requests for information on the certificate of insurance form must be specific, clear, and reasonable.
    - (B) Any explanatory information included in a completed certificate of insurance is limited to language in the referenced policy and any executed endorsements.
  - (5) A certificate of insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.
    - (A) A certificate of insurance may refer to the language in the underlying contract of insurance.
    - (B) A certificate of insurance may not refer to, describe, explain, or define obligations under a contract other than the underlying contract of insurance.

- (6) A certificate of insurance may not alter the terms and conditions of a right to notice of cancellation, nonrenewal, or material change, or any similar notice concerning a policy of insurance required by the insurance policy or Texas law.
  - (A) A certificate of insurance may not create a new or additional duty to notify.
  - (B) Any statement on a certificate of insurance regarding an existing duty to notify is limited to language in the referenced policy and any executed endorsements.
- (c) Disapproval. The commissioner will disapprove a filed certificate of insurance form, or withdraw approval of an approved certificate of insurance form if the form:
  - (1) contains a provision or has a title or heading that is misleading or deceptive or violates public policy;
  - (2) violates any state law, including an administrative rule;
  - (3) requires an agent to certify insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or
  - (4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

### Certificate of Insurance Checklist

**Instructions:** Use Part I of this form when an account is set up as new business, and each time the account is renewed, or the first time a certificate of insurance is requested. Use Part II each time a certificate is requested on the account.

---

**Part I**

Account Name: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Lines of business:	<input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Commercial Auto <input type="checkbox"/> Workers Compensation
Does the CGL policy include: (attach copy of endorsement to form when policy is issued)	<input type="checkbox"/> Blanket additional insured endorsement? <input type="checkbox"/> Blanket waiver of subrogation? <input type="checkbox"/> Blanket 30-day notice of cancellation provision? <input type="checkbox"/> Other? (Specify: _____)
Does the Commercial auto policy include: (attach copy of endorsement to form when policy is issued)	<input type="checkbox"/> Blanket additional insured endorsement? <input type="checkbox"/> Blanket waiver of subrogation? <input type="checkbox"/> Blanket 30-day notice of cancellation provision? <input type="checkbox"/> Other? (Specify: _____)
Does the Workers Compensation policy include: (attach copy of endorsement to form when policy is issued)	<input type="checkbox"/> Alternate employer endorsement? <input type="checkbox"/> Blanket waiver of subrogation? <input type="checkbox"/> Blanket 30-day notice of cancellation provision? <input type="checkbox"/> Other? (Specify: _____)

**Prepare a master certificate. If none of the above endorsements are attached to the policy, don't add any wording to the master certificate. Attach the master certificate to this form and forward to your supervisor for approval.**

Checked by supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

---

**Part II**

Certificate requested by: \_\_\_\_\_ of \_\_\_\_\_

If requested by someone other than the insured, confirmed with insured (name) \_\_\_\_\_

Date requested: \_\_\_\_\_

**Handler Certification:**

- Blanket endorsements are attached to the policy:
  - I attached copies of the endorsements to the certificate.
- I did not change any wording on the master certificate.
- I changed wording on the certificate as follows:
  - Certificate holder as an additional insured:
    - I specified the policies on which the additional insured was added
    - I specified the name and number of the endorsement used
    - I requested an endorsement from the company on each policy
  - Waiver of subrogation:
    - I specified the policies on which a waiver was added
    - I requested an endorsement from the company on each policy
  - Notice of cancellation to certificate holder:
    - I requested an endorsement from the company on each policy
  - Other – specify \_\_\_\_\_
    - I requested an endorsement from the company on each policy
    - I specified the name and number of the endorsement used
- I sent a copy of the certificate to the insurance companies.

Handler Signature: \_\_\_\_\_ Date: \_\_\_\_\_

