

# PROFESSIONAL Insurance Agents

**Please be advised:**

## New Jersey law forbids certain certificates of insurance requests

*(Chapter 195 of the Laws of 2015)*

*Prepared by Professional Insurance Agents of New Jersey*

On Jan. 11, 2016, New Jersey Gov. Chris Christie signed legislation into law (Chapter 195 of the Public Laws of 2015), which prohibits any person from preparing, issuing, requesting or requiring the issuance of a certificate of insurance that contains false or misleading information. The new law also authorizes the state's Department of Banking and Insurance to impose penalties for violations.

Effective April 10, 2016, this new section of Insurance Law makes it illegal to require a certificate of insurance that includes language of any kind, including warranties of coverage, that is not expressly found in the underlying policy.

### **Q. What certificates are covered under the new law?**

**A.** According to the law, a certificate is any document or instrument, no matter how titled or described, prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage.

### **Q. Who does the law apply to?**

**A.** The Certificates of Insurance Act (the new law) applies to "persons" as that term is defined by New Jersey law. The term "person" is a very expansive term. "Person" is defined by New Jersey statute to include "corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals. ..." In addition the term also includes the State of New Jersey and

the United States, which includes every state, territory and possession of the United States and any foreign country or government lawfully owning or possessing property within New Jersey.

### **Q. Does this new law govern E&S certificates?**

**A.** Yes, the act applies to an "insurer," which is defined as any organization that issues property or casualty insurance, which includes unauthorized surplus-lines insurers.

### **Q. What does the new certificates law prohibit?**

**A.** The Certificates of Insurance Act sets forth prohibited COI practices including, among others:

- preparing, issuing, requesting or requiring the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference;
- preparing, issuing, requesting or requiring the issuance of a certificate of insurance that purports to affirmatively or negatively alter, amend or extend the coverage provided by the policy of insurance to which the certificate of insurance makes reference;
- requiring that a certificate warrant that the policy of insurance referenced in the certificate complies with the insurance or indemnification requirements of a contract.

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**Q. What are acceptable certificate forms?**

**A.** Any certificate form can be used as long as it is not unfair, misleading or deceptive, or violates public policy; or violates any law, including any regulation promulgated by the commissioner.

Unlike the New York Certificates of Insurance Law, the New Jersey Certificates of Insurance Act does not enumerate specific acceptable certificates forms, for example an ISO or ACORD form as the only types of forms that can be used. Nor does the act require that a form be reviewed and approved by the New Jersey Department of Banking and Insurance.

**Q. Does the act apply to all certificates issued in the state?**

**A.** Yes, as long as the certificate is issued in connection with property, operations or risks located in New Jersey. The act will apply even if the policyholder, insurer, insurance producer, or person requesting or requiring the issuance of a certificate of insurance is located in another state.

**Q. Are “attestation” forms allowed?**

**A.** No. The act specifically states that a certificate of insurance shall not warrant that the policy of insurance referenced in the certificate complies with the insurance or indemnification requirements of a contract. Further, the inclusion of a contract number or description within a certificate of insurance shall not be interpreted as providing such a warranty.

**Q. What penalties will someone face for requiring a prohibited certificate?**

**A.** The New Jersey Department of Banking and Insurance may assess fines up to \$1,000 per violation. In addition the Certificates of Insurance Act also grants the commissioner of DOBI the authority to issue penalties pursuant to any other applicable provision of New Jersey law, including the New Jersey Insurance Producer Licensing Act of 2001 and the New Jersey Insurance Fraud Prevention Act. Fines under the New Jersey Insurance Producer Licensing Act of 2001 and the New Jersey Insurance Fraud Prevention Act can range anywhere from \$5,000 to \$15,000.