

**BULLETIN 94-1**

(Revised 10/96)

**INCORPORATION BY REFERENCE**

Utah Code Ann. §31A-21-106(1) states, in part:

(a) . . .an insurance policy may not contain any agreement or incorporate any provision not fully set forth in the policy or in an application or other document attached to and made a part of the policy at the time of its delivery, unless the policy, application, or agreement accurately reflects the terms of the incorporated agreement, provision, or attached document.

(b)(i) A policy may by reference incorporate rate schedules and classifications of risks and short-rate tables filed with the commissioner.

The Utah Supreme Court addressed this section of the Insurance Code, in *CALLUM v. FARMERS INSURANCE EXCHANGE* (217 Utah Adv. Rep. 13, 1993). The Court stated:

. . .Section 31A-21-106...directs that all provisions [of an insurance contract] must be physically present in the written contract itself or in other documents attached to the contract at the time of its delivery.

. . .Its aim is to ensure that the entire insurance contract is contained in one document so that the insured can determine from the policy exactly what coverage he or she has....

When drafting insurance policy forms insurers must be careful to ensure that those forms contain all provisions of the insurance contract. An insurance policy must include all the terms and conditions applicable to the coverage. Reference to another document or source to find the terms and provisions of coverage is not in compliance with the statute.

Insurance forms may not contain provisions incorporating or "deeming attached as if physically attached" applications or any other documents into the policy unless the form also clearly states that such documents will be attached to the policy no later than at the time of its delivery. Documents "on file with the insurer" are not considered part of the insurance policy.

Neither should definitions of terms be incorporated by reference. If key terms in an insurance contract are not clearly defined, the contract can be misleading, obscure and even deceptive. If terms are not defined other than by a general reference to a Federal or state law, an insured will not know the terms and conditions of coverage.

Materials such as financial reports, articles of incorporation, copies of contracts, procedural and diagnostic codes, etc., which are the basis for underwriting, should not be incorporated into the

policy. Rather, these documents should remain a part of the underwriting file. A reference in the application may state that the company has relied upon materials provided by the insured when determining that a policy would be issued.

To assure compliance with the statute, policy forms must not contain any incorporation provision or the policy language must state that the application and any other relevant documents will be attached to and be part of the policy at the time of its delivery, and these documents must then be attached. Failure to comply with the statute is a violation of the Utah Insurance Code and appropriate penalties may be imposed. Policy forms that do not comply are subject to disapproval upon examination by the Department. Policy forms that are not in compliance and that have been previously filed and not disapproved may be corrected and refiled with the commissioner without penalty. Sample application forms must be included in all filings where the application will be attached to the policy.

**DATED this 23rd day of September, 1996.**

Insurance Commissioner

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