

7219

I N   S E N A T E

March 24, 2010

---

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to excess line brokers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraphs 3 and 4 of subsection (b) of section 2118 of the  
2     insurance law, paragraph 3 as amended by chapter 684 of the laws of  
3     1993, subparagraph (A) of paragraph 3 as amended by chapter 498 of the  
4     laws of 1996, and paragraph 4 as amended by chapter 630 of the laws of  
5     1988, are amended to read as follows:  
6     (3) (A) The submission of insurance documents to the excess line asso-  
7     ciation shall be accompanied by a statement subscribed to, and affirmed  
8     by, the licensee or sublicensee as true under the penalties of perjury  
9     that, after diligent effort, the full amount of insurance required could  
10    not be procured, from authorized insurers, each of which is authorized  
11    to write insurance of the kind requested and which the licensee has  
12    reason to believe might consider writing the type of coverage or class  
13    of insurance involved, and further showing that the amount of insurance  
14    procured from an unauthorized insurer is only the excess over the amount  
15    procurable from an authorized insurer. The licensee, however, shall be  
16    excused from affirming that a diligent effort, as defined above, was  
17    made to procure the coverage from authorized insurers if the licensee's  
18    affidavit is accompanied by the affidavit of another broker involved in  
19    the placement affirming as true under the penalties of perjury that,  
20    after diligent effort by the affirming broker, the required insurance  
21    could not be procured from an authorized insurer which the affirming  
22    broker had reason to believe might consider writing the type of coverage  
23    or class of insurance involved. The licensee and the affirming broker  
24    shall be excused from affirming that a diligent effort was made (I) FOR  
25    TRANSACTIONS DEFINED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH, OR (II) if  
26    the superintendent determines, pursuant to paragraph four of this  
27    subsection, that no declinations are required.  
28    (B) A licensee or affirming broker shall be considered to have the  
29    reason to believe required by subparagraph (A) of this paragraph if the

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD16053-02-0

1 decision to offer the risk to the authorized insurer was based on any of  
2 the following:

3 (i) Recent acceptance by the authorized insurer of a type of coverage  
4 or class of insurance similar to that for which coverage is presently  
5 being sought;

6 (ii) Advertising by the authorized insurer or its agent indicating  
7 that the authorized insurer is willing to consider acceptance of this or  
8 a similar type of coverage or class of insurance;

9 (iii) Media communications (i.e., newspaper or magazine articles,  
10 trade publications, television and radio programming) indicating that  
11 the authorized insurer is writing, or is considering writing, this type  
12 of coverage or class of insurance;

13 (iv) Communications with other insurance professionals, risk managers,  
14 trade associations, the excess line association or the insurance depart-  
15 ment, which indicates that the authorized insurer might consider writing  
16 this type of coverage or class of insurance; or

17 (v) Any other valid basis for making such decision.

18 (C) Every licensee, or affirming broker, in connection with the place-  
19 ment of each risk pursuant to this section, shall record on the affida-  
20 vit required pursuant to subparagraph (A) of this paragraph the informa-  
21 tion relied upon that formed the basis of such licensee's or affirming  
22 broker's reason to believe that the authorized insurer might consider  
23 writing the type of coverage or class of insurance involved.

24 (D) Declinations obtained from authorized insurers which are affil-  
25 iates of, or, as defined in article fifteen of this chapter, under  
26 common control with, each other or the unauthorized insurer shall not  
27 meet the requirements of this subsection unless such related insurers  
28 operate as distinct and autonomous entities, and for underwriting  
29 purposes, compete with each other for the same type of coverage or class  
30 of insurance.

31 (E) (I) The superintendent, in a regulation, may determine whether  
32 there are circumstances where it may be appropriate, due to the unavail-  
33 ability from an authorized insurer of the leading type of coverage or  
34 the leading class of insurance required by the insured, to waive the  
35 requirement in subparagraph (A) of this paragraph that a licensee may  
36 procure from an unauthorized insurer only the amount of insurance which  
37 is excess over the amount procurable from an authorized insurer, and to  
38 instead permit the licensee to procure from an unauthorized insurer the  
39 full amount of insurance required by the insured.

40 (II) WITH RESPECT TO ANY QUOTE FOR COVERAGE FROM AN AUTHORIZED INSURER  
41 WHERE THE GROSS PREMIUM EXCEEDS BY TWENTY-FIVE PERCENT OR MORE, A QUOTE  
42 FOR COMPARABLE COVERAGE ACQUIRED BY A LICENSEE MAY BE SUBMITTED AS A  
43 DECLINATION BY THE LICENSEE OR AFFIRMING BROKER.

44 (F) NO DILIGENT EFFORT SHALL BE REQUIRED WHERE THE POLICY PROCURED:

45 (I) INSURES A PUBLICLY TRADED ENTITY,

46 (II) INSURES AN ENTITY WHICH PAYS AGGREGATE ANNUAL PREMIUMS ON ALL  
47 RISKS TOTALING AT LEAST ONE HUNDRED THOUSAND DOLLARS FOR POLICIES WRIT-  
48 TEN EXCLUSIVE OF PREMIUM FOR WORKERS' COMPENSATION AND HEALTH INSURANCE  
49 BENEFITS, EMPLOYS, UTILIZES OR RETAINS A RISK MANAGER TO ASSIST IN THE  
50 NEGOTIATION AND PURCHASE OF A POLICY; AND IN ADDITION, IN ALL CASES  
51 MEETS ANY ONE OF THE FOLLOWING CRITERIA: HAS A NET WORTH OF AT LEAST  
52 TWENTY-FIVE MILLION DOLLARS, IS A FOR-PROFIT BUSINESS ENTITY THAT GENER-  
53 ATES ANNUAL GROSS REVENUES OF FIFTY MILLION DOLLARS, IS A NOT-FOR-PROFIT  
54 ORGANIZATION OR PUBLIC ENTITY WITH AN ANNUAL BUDGET EXCEEDING  
55 TWENTY-FIVE MILLION DOLLARS OR IS A MUNICIPALITY WITH A POPULATION OF  
56 NOT LESS THAN FIFTY THOUSAND PERSONS, OR

(III) RENEWS A POLICY WITH THE SAME INSURER FOR A SECOND CONSECUTIVE ONE YEAR TERM, OR RENEWS THE POLICY FOR A THIRD CONSECUTIVE ONE YEAR TERM.

(4) The number of declinations constituting diligent effort in regard to placement of coverage with authorized insurers for purposes of paragraph three of this subsection shall be three, unless (A) THE DILIGENT EFFORT IS EXCUSED BY SUBPARAGRAPH (F) OF PARAGRAPH THREE OF THIS SUBSECTION, OR (B) the superintendent after a hearing, on a record, upon findings and conclusions, determines that another number of such declinations is appropriate in regard to particular coverages. In making such determinations, the superintendent shall consider relevant market conditions, including [unavailability of particular coverages from authorized insurers, and may conduct market surveys] WHAT IS IN THE BEST INTERESTS OF INSURED SEEKING INSURANCE, THE NECESSITY FOR MANUSCRIPTED POLICIES WHERE STANDARD FORMS ARE INADEQUATE OR UNAVAILABLE, FOSTERING INSURANCE PRODUCT INNOVATION AND DEVELOPMENT, AND WHERE PARTICULAR COVERAGES ARE NOT REASONABLY AND WIDELY AVAILABLE. THE SUPERINTENDENT MAY CONDUCT MARKET SURVEYS TO DETERMINE MARKET CONDITIONS. Any such determination shall be reviewed at least annually by the superintendent.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to subsection (b) of section 2118 of the insurance law made by section one of this act shall not affect the expiration of such subsection and shall be deemed to expire therewith.