S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 25, 2010

Introduced by M. of A. MORELLE -- read once and referred 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:

Section 1. Subsection (b) of section 2118 of the insurance law, as amended by chapter 630 of the laws of 1988, paragraph 3 as amended by chapter 684 of the laws of 1993, subparagraph (A) of paragraph 3 as amended by chapter 498 of the laws of 1996, paragraph 7 as added by chapter 74 of the laws of 2001, and paragraphs 8 and 9 as added by chapter 687 of the laws of 2003, is amended to read as follows:

(b) (1) Within forty-five days after a policy is procured, a licensee shall submit the declarations page or cover note of every policy procured under his or her license to the excess line association established pursuant to section two thousand one hundred thirty of this article for recording and stamping. In the event that no declarations page or cover note is available to the licensee, within forty-five days after the policy is procured, the licensee shall submit a binder to the excess line association in lieu of such declarations page or cover note. In the event that a binder is submitted to the excess line association, the licensee shall submit the declarations page or cover note to the excess line association promptly upon receipt. Every insurance document submitted to the excess line association pursuant to this subsection shall set forth:

(A) the name and address of the insured;

(B) the gross premium charged;

(C) the name of the unauthorized insurer; and

(D) the kind of insurance procured.

(2) Subsequent endorsements which do not affect the premium charged are exempted from stamping.

(3) (A) The submission of insurance documents to the excess line association shall be accompanied by a statement subscribed to, and affirmed by, the licensee or sublicensee as true under the penalties of perjury that, after diligent effort, the full amount of insurance required could

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

LBD16053-01-0

not be procured, from authorized insurers, each of which is authorized to write insurance of the kind requested and which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved, and further showing that the amount of insurance procured from an unauthorized insurer is only the excess over the amount procurable from an authorized insurer. The licensee, however, shall be excused from affirming that a diligent effort, as defined above, was made to procure the coverage from authorized insurers if the licensee's affidavit is accompanied by the affidavit of another broker involved in the placement affirming as true under the penalties of perjury that, after diligent effort by the affirming broker, the required insurance could not be procured from an authorized insurer which the affirming broker had reason to believe might consider writing the type of coverage or class of insurance involved. The licensee and the affirming broker shall be excused from affirming that a diligent effort was made (I) FOR TRANSACTIONS DEFINED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH, OR (II) if the superintendent determines, pursuant to paragraph four of this subsection, that no declinations are required.

(B) A licensee or affirming broker shall be considered to have the reason to believe required by subparagraph (A) of this paragraph if the decision to offer the risk to the authorized insurer was based on any of the following:

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

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

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

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

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

(C) Every licensee, or affirming broker, in connection with the placement of each risk pursuant to this section, shall record on the affidavit required pursuant to subparagraph (A) of this paragraph the information relied upon that formed the basis of such licensee's or affirming broker's reason to believe that the authorized insurer might consider writing the type of coverage or class of insurance involved.

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

(E) (I) The superintendent, in a regulation, may determine whether there are circumstances where it may be appropriate, due to the unavailability from an authorized insurer of the leading type of coverage or the leading class of insurance required by the insured, to waive the requirement in subparagraph (A) of this paragraph that a licensee may procure from an unauthorized insurer only the amount of insurance which

is excess over the amount procurable from an authorized insurer, and to instead permit the licensee to procure from an unauthorized insurer the full amount of insurance required by the insured.

(II) ANY QUOTE FOR COVERAGE FROM AN AUTHORIZED INSURER WHERE THE GROSS PREMIUM EXCEEDS BY TWENTY-FIVE PERCENT OR MORE, A QUOTE FOR COMPARABLE COVERAGE ACQUIRED BY AN EXCESS LINE BROKER MAY BE SUBMITTED AS A DECLINATION BY THE EXCESS LINE BROKER OR AFFIRMING BROKER.

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

(I) INSURES A PUBLICLY TRADED ENTITY,

(II) INSURES AN ENTITY WHICH PAYS AGGREGATE ANNUAL PREMIUMS ON ALL RISKS TOTALING AT LEAST ONE HUNDRED THOUSAND DOLLARS FOR POLICIES WRITTEN EXCLUSIVE OF PREMIUM FOR WORKERS' COMPENSATION AND HEALTH INSURANCE BENEFITS, EMPLOYS, UTILIZES OR RETAINS A RISK MANAGER TO ASSIST IN THE NEGOTIATION AND PURCHASE OF A POLICY; AND IN ADDITION, IN ALL CASES MEETS ANY ONE OF THE FOLLOWING CRITERIA: HAS A NET WORTH OF AT LEAST TWENTY-FIVE MILLION DOLLARS, IS A FOR-PROFIT BUSINESS ENTITY THAT GENERATES ANNUAL GROSS REVENUES OF FIFTY MILLION DOLLARS, IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY WITH AN ANNUAL BUDGET EXCEEDING TWENTY-FIVE MILLION DOLLARS OR IS A MUNICIPALITY WITH A POPULATION OF 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 SEARCH 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 INSUREDS 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.

(5) Before placing business with an unauthorized insurer, each licensee shall ascertain and verify the fact that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the licensee. No unauthorized insurer shall be deemed unacceptable for placement of business solely on the ground that it has been so authorized to write such business in its domiciliary jurisdiction for a period of less than three years preceding the placement of such risk by the licensee. In determining whether business may be placed with such unauthorized insurer, the superintendent shall consider such factors as: the interests of the public and policyholders, the length of time such insurer has been authorized in its domiciliary jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers.

(6) It shall be unlawful for a licensee as defined in section two thousand one hundred one of this article and pursuant to sections two thousand one hundred four and two thousand one hundred five of this article to deliver in this state any declarations page of an insurance

policy or cover note evidencing insurance unless such insurance document is stamped by the excess line association or is exempt from such requirements; provided, however, that a licensee's failure to comply with the requirements of this subsection shall not affect the validity of the coverage.

(7) Compliance by a licensee with the requirements set forth in this section in connection with submitting for recording and stamping declarations pages, cover notes, binders, endorsements, affidavits, notices of excess line placement and other excess line insurance documents may be accomplished by means of electronic or other media transmission, provided the superintendent first approves such methods of submitting for recording and stamping.

(8) For purposes of this article, unless exempt under the provisions of section two thousand one hundred seventeen of this article, a policy of insurance obtained from an insurer not authorized to transact business in this state must be procured pursuant to an excess line license when the entire property or risk exposure insured or any part thereof, is located in this state and:

(A) the insured negotiated to acquire the coverage from within this state; or

(B) the policy was delivered to the insured in this state.

(9) Nothing in this article shall prohibit an excess line licensee from placing risks under the excess or surplus line law of another state provided that the excess line licensee:

(A) is licensed under the applicable state law as an excess or surplus line broker or places such risk through a licensed excess or surplus line broker in such state; and

(B) either no portion of the property or risk exposure is in this state, or the insured has property or risk exposure both in this state and in another state where the insured maintains a bona fide office from which it negotiated to acquire the coverage and to which the policy is delivered.

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.