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

7551

I N S E N A T E

May 15, 2014

Introduced by Sen. SEWARD -- 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 the duties of excess line brokers

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

Section 1. Paragraph 1 of subsection (a) of section 2118 of the insurance law, as amended by chapter 220 of the laws of 1986, is amended to read as follows:

(1) (A) Every licensee licensed pursuant to section two thousand one hundred five of this article shall be required to use due care in selecting the unauthorized insurer from whom policies are procured under his license.

(B) A LICENSEE IS PRESUMED TO HAVE EXERCISED DUE CARE IN SELECTING AN UNAUTHORIZED INSURER IF AT THE TIME OF PLACEMENT, THE EXCESS LINE ASSOCIATION ESTABLISHED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY OF THIS ARTICLE HAS PUBLISHED THE NAME OF SUCH INSURER ON A LIST OF ELIGIBLE UNAUTHORIZED INSURERS. THE EXCESS LINE ASSOCIATION WILL LIST NO INSURER UNLESS IT HAS CONDUCTED AN ANALYSIS OF SUCH INSURER UPDATED NO LESS THAN ANNUALLY AND DETERMINED SUCH INSURER,

(I) IS FINANCIALLY SOLVENT AND STABLE;

(II) MAINTAINS ADEQUATE CAPACITY AND POLICYHOLDER'S SURPLUS TO MEET ITS OBLIGATIONS TO POLICYHOLDERS, AND ALL OTHER LIABILITIES;

(III) IS MANAGED BY INDIVIDUALS WHO ARE TRUSTWORTHY AND COMPETENT; AND

(IV) MAINTAINS CLAIMS PRACTICES IN A SATISFACTORY MANNER.

S 2. Subparagraph (C) of paragraph 3 of subsection (b) of section 2118 of the insurance law, as amended by chapter 684 of the laws of 1993, is amended to read as follows:

(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] THE NAME OF THE INSURER DECLINING SUCH RISK AND AN IDENTIFICATION NUMBER FOR SUCH INSURER ISSUED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR DEPARTMENT OF FINANCIAL SERVICES.

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

LBD15141-02-4

INFORMATION relied upon [that] WHICH 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 SHALL BE MAINTAINED BY SUCH LICENSEE OR AFFIRMING BROKER IN WRITING FOR A PERIOD OF THREE YEARS FROM THE EXPIRATION OF SUCH POLICY.

S 3. Paragraph 4 of subsection (b) of section 2118 of the insurance law, as amended by chapter 630 of the laws of 1988, is amended to read as follows:

(4) (A) 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 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. Any such determination shall be reviewed at least annually by the superintendent.

(B) THE DILIGENT EFFORT MADE BY A LICENSEE OR AFFIRMING BROKER FOR ANY POLICY THAT PROVIDES COVERAGE FOR A ONE YEAR PERIOD, SHALL BE DEEMED A VALID DILIGENT EFFORT FOR THE FIRST AND SECOND ANNUAL RENEWAL THEREOF WHEN THE SAME INSURER PROVIDES SUCH RENEWAL COVERAGE.

S 4. This act shall take effect on the ninetieth day after it shall have become a law and apply to insurance policies placed or procured on and after such date, provided, however, that the amendments to subsection (b) of section 2118 of the insurance law made by sections two and three of this act shall not affect the expiration and reversion of such subsection and shall be deemed to expire therewith.