

# STATE OF NEW YORK

769

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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 permitting certain insurance coverage to be placed by licensed excess line broker with unauthorized insurers without regard to the diligent effort requirement and simplifying the excess line insurance placement affidavit requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (A) of paragraph 3 of subsection (b) of  
2 section 2118 of the insurance law, as amended by section 12 of part I of  
3 chapter 61 of the laws of 2011, is amended to read as follows:

4 (A) Except as provided in subparagraph (F) and subject to subparagraph  
5 (C) of this paragraph, submission of insurance documents to the excess  
6 line association shall be accompanied by a statement subscribed to, and  
7 affirmed by, the licensee or sublicensee as true under the penalties of  
8 perjury that, after diligent effort, the full amount of insurance  
9 required could not be procured, from authorized insurers, each of which  
10 is authorized to write insurance of the kind requested and which the  
11 licensee has reason to believe might consider writing the type of cover-  
12 age or class of insurance involved, and further showing that the amount  
13 of insurance procured from an unauthorized insurer is only the excess  
14 over the amount procurable from an authorized insurer. The licensee,  
15 however, shall be excused from affirming that a diligent effort, as  
16 defined above, was made to procure the coverage from authorized insurers  
17 if the licensee's affidavit is accompanied by the affidavit of another  
18 broker involved in the placement affirming as true under the penalties  
19 of perjury that, after diligent effort by the affirming broker, the  
20 required insurance could not be procured from an authorized insurer  
21 which the affirming broker had reason to believe might consider writing

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

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1 the type of coverage or class of insurance involved. The licensee and  
2 the affirming broker shall be excused from affirming that a diligent  
3 effort was made if the superintendent determines, pursuant to paragraph  
4 four of this subsection, that no declinations are required. Notwith-  
5 standing anything to the contrary contained in this chapter, where a  
6 retail insurance broker seeks to procure or place commercial lines  
7 insurance through an unaffiliated wholesale excess line insurance broker  
8 and the wholesale excess line insurance broker shall be excused from  
9 making any diligent effort otherwise required by this article.

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

13 (C) Every licensee, or affirming broker, in connection with the place-  
14 ment of each risk pursuant to this section not otherwise exempt from the  
15 diligent effort requirement, shall record on the affidavit required  
16 pursuant to subparagraph (A) of this paragraph the name and National  
17 Association of Insurance Commissioners (NAIC) code of each authorized  
18 insurer declining a risk and information relied upon that formed the  
19 basis of such licensee's or affirming broker's reason to believe that  
20 the authorized insurer might consider writing the type of coverage or  
21 class of insurance involved. No additional diligent effort information  
22 shall be reported on on the affidavit.

23 § 3. Section 2119 of the insurance law is amended by adding a new  
24 subsection (g) to read as follows:

25 (g) (1) For the purposes of this section:

26 (A) a "retail insurance broker" means an insurance broker licensee who  
27 directly deals with an insured;

28 (B) a "wholesale excess line insurance broker" means the licensed  
29 excess line insurance broker from whom or through whom the retail insur-  
30 ance broker has procured excess line coverage on behalf of the insured;  
31 and

32 (C) "commercial lines insurance" means any policy of insurance not  
33 defined as a "covered policy" in subsection (a) of section three thou-  
34 sand four hundred twenty-five of this chapter.

35 (2) A retail insurance broker and a wholesale excess line insurance  
36 broke are unaffiliated if one does not control, is not controlled by, or  
37 is not under common control with the other. One has control over the  
38 other if the broker directly or indirectly or acting through one or more  
39 other persons owns, controls, or has the power to vote twenty-five  
40 percent or more of any class of voting securities of the other; or  
41 controls in any manner the election of a majority of the directors or  
42 trustees of the other.

43 § 4. This act shall take effect immediately, provided, however, that  
44 the amendments to subparagraphs (A) and (C) of paragraph 3 of subsection  
45 (b) of section 2118 of the insurance law made by sections one and two of  
46 this act shall not affect the expiration of such paragraph and shall be  
47 deemed to expire therewith.