

STATE OF NEW YORK

8128

IN SENATE

January 25, 2022

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 a waiver of the diligent effort requirement in limited circumstances for certain insurance coverage to be placed by licensed excess line brokers with unauthorized insurers

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) of this paragraph and
5 subject to subparagraph (C) of this paragraph, submission of insurance
6 documents to the excess line association shall be accompanied by a
7 statement subscribed to, and affirmed by, the licensee or sublicensee as
8 true under the penalties of perjury that, after diligent effort, the
9 full amount of insurance required could not be procured, from authorized
10 insurers, each of which is authorized to write insurance of the kind
11 requested and which the licensee has reason to believe might consider
12 writing the type of coverage or class of insurance involved, and further
13 showing that the amount of insurance procured from an unauthorized
14 insurer is only the excess over the amount procurable from an authorized
15 insurer. The licensee, however, shall be excused from affirming that a
16 diligent effort, as defined above, was made to procure the coverage from
17 authorized insurers if the licensee's affidavit is accompanied by the
18 affidavit of another broker involved in the placement affirming as true
19 under the penalties of perjury that, after diligent effort by the
20 affirming broker, the required insurance could not be procured from an
21 authorized insurer which the affirming broker had reason to believe
22 might consider writing the type of coverage or class of insurance
23 involved. The licensee and the affirming broker shall be excused from
24 affirming that a diligent effort was made if the superintendent deter-
25 mines, pursuant to paragraph four of this subsection, that no declina-
26 tions are required. Notwithstanding any provision to the contrary

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

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1 contained in this chapter, where a retail producing insurance
2 broker seeks to procure or place commercial lines insurance through
3 an unaffiliated wholesale excess line insurance broker, both the
4 retail producing insurance broker and the wholesale excess line insur-
5 ance broker shall be excused from making any diligent effort otherwise
6 required by this article.

7 § 2. Section 2118 of the insurance law is amended by adding a new
8 subsection (g) to read as follows:

9 (g) (1) As used in this section:

10 (A) "retail producing insurance broker" means an insurance broker
11 licensee who directly deals with an insured;

12 (B) "wholesale excess line insurance broker" means the licensed excess
13 line insurance broker from whom or through whom the retail insurance
14 broker has procured excess line coverage on behalf of the insured; and

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

18 (2) A retail producing insurance broker and a wholesale excess line
19 insurance broker are unaffiliated if such broker does not control, is
20 not controlled by, or is not under common control with the other. A
21 retail producing insurance broker or a wholesale excess line insurance
22 broker has control over the other if the broker: (A) directly or indi-
23 rectly or acting through one or more other persons owns, controls, or
24 has the power to vote twenty-five percent or more of any class of voting
25 securities of the other, or (B) controls in any manner the election of a
26 majority of the directors or trustees of the other.

27 § 3. This act shall take effect immediately, provided, however, that
28 the amendments to subparagraph (A) of paragraph 3 of subsection (b) of
29 section 2118 of the insurance law made by section one of this act shall
30 not affect the expiration of such subsection and shall be deemed to
31 expire therewith.