STATE OF NEW YORK

5896

2023-2024 Regular Sessions

IN SENATE

March 22, 2023

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:

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

(A) Except as provided in subparagraph (F) **of this paragraph and subject to subparagraph (C)** of this paragraph, 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 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

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

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affirming that a diligent effort was made if the superintendent determines, pursuant to paragraph four of this subsection, that no declinations are required. **Notwithstanding any provision to the contrary contained in this chapter, where a retail producing insurance broker seeks to procure or place commercial lines insurance through an unaffiliated wholesale excess line insurance broker, both the retail producing insurance broker and the wholesale excess line insurance broker shall be excused from making any diligent effort otherwise required by this article.**

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

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

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

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

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

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

§ 3. This act shall take effect immediately, provided, however, that the amendments to subparagraph (A) of paragraph 3 of 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.