# STATE OF NEW YORK

2796

2023-2024 Regular Sessions

# IN SENATE

January 24, 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 excess line coverage for certain medical malpractice insurance

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

Section 1. Subsection (e) of section 2118 of the insurance law, as added by chapter 684 of the laws of 1993, subparagraph (A) of paragraph 2 as amended by chapter 587 of the laws of 2002, subparagraph (C) of paragraph 2 as amended by chapter 498 of the laws of 1996, is amended to read as follows:

(e)(1) Except as provided in paragraph two of this subsection, no licensee shall be required to obtain a declination from an association established pursuant to article fifty-four or fifty-five of this chapter, or to apply for insurance through a plan established pursuant to article fifty-three of this chapter, as a condition of procuring insurance pursuant to this section.

(2) (A) Unless the licensee obtains a declination from the appropriate association, or from an insurer pursuant to an application for coverage through a plan, no diligent effort shall be considered to have been made if the insurance is available from the plan or association in connection with the placement of:

(i) a policy of non-commercial motor vehicle liability insurance; **or**

(ii) [~~**medical malpractice insurance for a general hospital, as defined in subdivision ten of section two thousand eight hundred one of the public health law, a physician or dentist; or**~~

~~**(iii)**~~] insurance which by law must be provided by an authorized insurer.

(B) In connection with the placement of any other kind of insurance, a declination from the appropriate association, or from an insurer pursuant to an application for coverage through a plan, shall be required

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

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unless prior to the placement the insured has been advised of the availability of insurance from the plan or association.

(C) The affirming broker shall provide written notice to the insured that the placement was made with an unauthorized insurer. A copy of this notice shall be attached to the affirming broker's affidavit. The affidavits required by this section to be completed by the affirming broker shall include a statement that the affirming broker advised the insured in writing:

(i) that the unauthorized insurer with which the coverage is being placed is not authorized to do an insurance business in this state and is not subject to supervision by this state;

(ii) that in the event of the insolvency of the unauthorized insurer, losses will not be covered by any New York state insolvency fund;

(iii) that the policy may not be subject to all of the regulations of the superintendent pertaining to policy forms; and

(iv) such other information as the superintendent may, by regulation, require.

§ 2. This act shall take effect immediately.