§ 2117. Acting for or aiding unlicensed or unauthorized insurers or health maintenance organizations. (a) No person, firm, association or corporation shall in this state act as agent for any insurer or health maintenance organization which is not licensed or authorized to do an insurance or health maintenance organization business in this state, in the doing of any insurance or health maintenance organization business in this state or in soliciting, negotiating or effectuating any insurance, health maintenance organization or annuity contract or shall in this state act as insurance broker in soliciting, negotiating or in any way effectuating any insurance, health maintenance organization or annuity contract of, or in placing risks with, any such insurer or health maintenance organization, or shall in this state in any way or manner aid any such insurer or health maintenance organization in effecting any insurance, health maintenance organization or annuity contract.

(b) Notwithstanding the provisions of subsection (a) hereof, any insurance broker licensed under subparagraph (B) of paragraph one of subsection (b) of section two thousand one hundred four of this article may negotiate a contract of insurance, or place insurance, in an insurer not authorized to do business in this state, as follows:

(1) a contract of reinsurance on risks produced by such broker;

(2) insurance against loss of or damage to property having a permanent situs outside of this state; and

(3) marine insurance of the following kind or kinds, where it is reasonable so to do with due regard to the interests of all concerned and whether or not, at the time of such negotiation, the subject matter of such insurance is within or without this state:

(A) insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests, goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks and marine builders' risks; and

(B) insurance in connection with ocean going vessels against any of the risks specified in paragraph twenty-one of subsection (a) of section one thousand one hundred thirteen of this chapter.

(c) Notwithstanding the provisions of subsection (a) hereof, any insurance broker licensed under subparagraph (B) of paragraph one of subsection (b) of section two thousand one hundred four of this article may negotiate a contract of insurance or place insurance in an unauthorized insurer as follows:

(1) insurance against legal liability arising out of the ownership, operation or maintenance of any motor vehicle or aircraft which is neither principally garaged nor principally used in this state, arising out of any activity carried on wholly outside of this state or arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state, but in case such property or risk is located in any other state, then only in an insurer authorized to do such business in such state or in an insurer in which a licensed insurance broker of such state may lawfully place such insurance; and

(2) fidelity bonds guaranteeing the fidelity of persons holding or exercising positions of public or private trust wholly outside of this state, and surety bonds guaranteeing or assuming the performance of any contract or other obligation of the kind included under subparagraphs (B) and (C) of paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter, to be performed wholly outside of this state; but if such positions are held or exercised in another state or if such contract or other obligation is to be performed wholly or partly in another state, then only if such insurance is placed in an insurer authorized to do such business in such state, or in which a licensed broker of such state may lawfully place such insurance.

(d) Notwithstanding the provisions of subsection (a) hereof, any licensed reinsurance intermediary may negotiate a contract of reinsurance, or place reinsurance, in an insurer not authorized to do business in this state.

(e) This section shall not authorize any person, firm, association or corporation to guarantee or otherwise validate or secure the performance or legality of any agreement, instrument or policy of insurance or annuity contract of any insurer not authorized to do business in this state, or to bind risks, validate, effect by countersignature, endorsement or otherwise, any binder, memorandum, cover note, slip, certificate, policy or other instrument of insurance of any insurer not authorized or licensed to do business in this state, or to make binding

declarations of risks thereunder, or permit any unauthorized insurer to do any insurance business by its agent acting within this state; but licensed insurance brokers acting pursuant to subsections (b) and (c) hereof may issue to their clients, the insureds, confirmation of insurance so lawfully placed.

(f) This chapter shall not prohibit or prevent an attorney and counsellor at law from representing an unauthorized insurer in litigation or settlement of claims in this state.

(g) Any person, firm, association or corporation violating any provision of this section shall, in addition to any other penalty provided by law, forfeit to the people of the state the sum of five hundred dollars for each transaction.

(h) (1) This section shall not prohibit any person, firm, association or corporation from acting within the scope of the authority conferred by section two thousand one hundred five of this article.

(2) Notwithstanding subsection (a) of this section, a licensed insurance broker may deliver to the insured an insurance policy or contract procured by any person, firm, association or corporation acting pursuant to the authority conferred by section two thousand one hundred five of this article.

(3) Notwithstanding subsection (a) of this section and any other provision of law to the contrary, any excess line broker licensed pursuant to section two thousand one hundred five of this article may exercise binding authority and execute an authority to bind coverage on behalf of an insurer not licensed or authorized to do business in this state pursuant to the provisions of subsection (f) of section two thousand one hundred eighteen of this article.

(i) Notwithstanding subsection (a) of this section, a licensed insurer may provide, from its office in the state, services to support the insurance business of an unauthorized insurer with which it is affiliated, provided that the unauthorized insurer has satisfied all applicable requirements for placements by excess line brokers as set forth in section two thousand one hundred eighteen of this article. Such services may include, but shall not be limited to, computer operations, clerical and staffing support, underwriting, negotiating contract terms, quoting premiums, binding coverage, drafting and issuing policies and claims handling, investigation and payment, among other incidental

services. Services expressly prohibited under this section include the marketing, soliciting or advertising by the unauthorized insurer directly to policyholders. Notwithstanding paragraph two of subsection (a) of section two thousand one hundred twenty-two of this article, such unauthorized insurers shall be permitted to advertise to, and market and solicit through, excess line brokers licensed pursuant to section two thousand one hundred five of this article, from an office within the state. All obligations of such licensee under this article shall remain in full force and effect. Any document issued by an unauthorized insurer that indicates any location within this state in which it conducts its operations shall include a prominent notice that the insurer is not licensed by the state of New York, in no smaller than 10 point type, in accordance with regulations as may be promulgated by the superintendent.

(j) Nothing in this section shall prohibit a person who is not a resident of this state from selling, soliciting or negotiating a property/casualty insurance contract of an insurer not authorized to do business in this state, provided that: (1) the insured's home state is a state other than this state; and (2) the person is licensed to sell, solicit or negotiate excess line insurance in the insured's home state.

(k)(1) Notwithstanding subsection (a) of this section, any insurance broker licensed under subparagraph (A) of paragraph one of subsection (b) of section two thousand one hundred four of this article with respect to life insurance or annuities, subparagraph (A) or (B) of paragraph one of subsection (b) of such section with respect to accident and health insurance, or subparagraph (B) of this paragraph with respect to property/casualty insurance may engage in the activities specified in paragraph two of this subsection with respect to an alien insurer not authorized to do an insurance business in this state, provided that:

(A) the activities relate to a policy or contract of group life, group annuity, group accident and health insurance, or property/casualty insurance where the policyholder or proposed policyholder is a multinational entity resident outside the United States, the policy or contract covers the multinational entity's liabilities, properties, employees and their dependents, and the liabilities arise, or the properties and employees reside outside of the United States, except that the policy or contract may provide coverage to employees who are temporarily inside the United States;

(B) the policy or contract shall not be underwritten or negotiated in this state or issued or delivered in the United States;

(C) the alien insurer is authorized to transact the kinds of insurance business in the jurisdictions where the policies or contracts will be issued or delivered and the policies or contracts are issued in conformance with the laws of such jurisdictions;

(D) before engaging in any of the activities specified in paragraph two of this subsection, the licensed insurance broker provides written notice to the multinational entity that the alien insurer is not licensed in or authorized to do business in this state; the policy or contract is not protected by the New York state guaranty funds; the policy or contract has not been approved by the superintendent; and the policy or contract may not be subject to all of the laws of this state;

(E) the alien insurer shall not maintain any office in this state; and

(F) except as specifically provided in this section, the licensed insurance broker shall not call attention to the alien insurer by any advertisement or public announcement in this state.

(2) Subject to paragraph one of this subsection, the licensed insurance broker may engage in this state in only the following activities with respect to the alien insurer:

(A) provide information to the multinational entity with respect to a policy or contract of group life, group annuity, group accident and health insurance, or a property/casualty insurance policy issued or delivered or that will be issued or delivered by the alien insurer;

(B) meet and discuss insurance needs with the multinational entity, including providing information directly to the entity in person or otherwise about the policies or contracts offered by the alien insurer; and facilitating introductions with the multinational entity's human resources and benefits manager in each country in which the multinational entity has employee benefit needs;

(C) refer the multinational entity to the alien insurer and provide information to the multinational entity about the alien insurer;

(D) respond to requests for information by representatives of the multinational entity concerning quotes and any other specific terms and conditions of a group life, group annuity, group accident and health insurance, or property/casualty insurance policy or contract being negotiated in the jurisdiction where the policy or contract will be

issued or delivered by the alien insurer;

(E) provide information concerning renewals of existing policies or contracts of group life, group annuity, group accident and health insurance, or a property/casualty insurance policy issued by the alien insurer; and

(F) manage the employee benefits program of the multinational entity, including aggregating and reporting employee benefits and financial information about the program.

(3) Any activity in which a licensed insurance broker engages with respect to an alien insurer pursuant to this subsection shall be deemed to be included within the meaning of "any other transaction of business" for the purposes of section one thousand two hundred thirteen of this article.

(4) For purposes of this subsection:

(A) "multinational entity" shall mean an institution that is a member of a multinational group of institutions operating globally where: (i) at least one institution in the group is formed under the laws of the United States or has significant operations in the United States; and (ii) at least one institution in the group has offices outside the United States; and

(B) "group of institutions" shall mean a parent corporation and its subsidiaries.