

STATE OF NEW YORK

7770

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. EPSTEIN, TAYLOR -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to providing for licensing of an immigration bond business

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

1 Section 1. The insurance law is amended by adding a new article 68-A
2 to read as follows:

ARTICLE 68-A

IMMIGRATION BOND BUSINESS

Section 6810. Immigration bond business.

6 6811. Immigration bond business; licensing.

7 6812. Restrictions.

8 6813. Premium or compensation.

9 6814. Civil action by private party; damages; attorney fees.

10 6815. Severability clause.

11 6816. Regulations.

12 § 6810. Immigration bond business. (a)(1) Any person, firm or organ-
13 ization who charges a premium or receives compensation in connection
14 with the depositing of money or property as bond, executes as surety, or
15 negotiates or solicits, any bond, or indemnifies or underwrites bonds in
16 relation to any proceeding, filing or action affecting the non-immi-
17 grant, immigrant or citizenship status of a person which arises under
18 the immigration and nationality law, executive order or presidential
19 proclamation, or which arises under actions or regulations of the United
20 States department of homeland security shall be deemed to be doing an
21 immigration bond business as defined in this article and doing an insur-
22 ance business as defined in article eleven of this chapter.

23 (2) Except for a corporation authorized to write fidelity and surety
24 insurance and to do an immigration bond business pursuant to the
25 provisions of article eleven of this chapter and otherwise in compliance
26 with all other requirements of this chapter to do such business, no
27 person, firm or corporation shall engage in an immigration bond business
28 in this state.

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

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1 (b) No person, firm or corporation shall in this state do an insurance
2 business or an immigration bond business as defined in subsection (a) of
3 this section unless authorized by a license issued and in force as
4 provided under article eleven of this chapter.

5 § 6811. Immigration bond business; licensing. (a) No person, firm or
6 corporation or any officer or employee thereof shall act in this state
7 as an agent or solicitor of an immigration bond business in soliciting,
8 negotiating or effectuating any such deposit or immigration bond by such
9 immigration bond business unless licensed by the superintendent as an
10 agent pursuant to the provisions of this section.

11 (b) Every immigration bond business in this state shall procure a
12 license pursuant to the provisions of this section for each of its
13 employees, officers and agents acting for it in soliciting, negotiating
14 or effectuating any such deposit or immigration bond.

15 (c) The superintendent may, in the superintendent's discretion, issue
16 to any person, firm or corporation a license to act as an agent of an
17 immigration bond business in soliciting, negotiating or effectuating any
18 such deposit or bail bond by such immigration bond business.

19 (d) Any such license issued to an immigration bond business shall
20 authorize only the members named in such license as sublicensees, to act
21 individually as agents thereunder. Any sublicense issued to a corpo-
22 ration shall authorize only the officers and directors named in such
23 license as sublicensees, to act individually as agents thereunder.
24 Every sublicensee, acting as an insurance agent pursuant to a license
25 issued to a firm or corporation, shall be authorized to act only in the
26 name of such firm or corporation.

27 (e) Before the issuance of a license every applicant shall satisfy the
28 superintendent as to his or her trustworthiness and competence and
29 otherwise comply with the conditions set forth in this section. The
30 superintendent may refuse to issue any such license if in his or her
31 judgment such refusal will best promote the interests of the people of
32 this state.

33 (f) At the time of the application for every license a twenty-five
34 dollar fee shall be paid to the superintendent for each year or fraction
35 of a year in which a license shall be valid for each individual appli-
36 cant and for each proposed sublicensee.

37 (g) Every applicant for a license hereunder shall file with the super-
38 intendent written evidence by those who know his or her character and
39 reputation and by such other proof as the superintendent may require,
40 including his or her fingerprints, that he or she is a person of good
41 character and reputation and has never been convicted of any offense
42 involving moral turpitude or of any crime. If such applicant is a firm
43 or corporation such proof must be made with respect to every member,
44 shareholder, officer and director of such firm or corporation. Such
45 fingerprints shall be submitted to the division of criminal justice
46 services for a state criminal history record check, as defined in subdi-
47 vision one of section three thousand thirty-five of the education law
48 and may be submitted to the federal bureau of investigation for a
49 national criminal history record check.

50 (h) In order to determine the competence of each applicant for a
51 license or a sublicense, the superintendent shall require every appli-
52 cant to pass to the satisfaction of the superintendent a written exam-
53 ination to be prepared by the superintendent and appropriate to the
54 doing of an immigration bond business. If the applicant or any proposed
55 sublicensee intends to maintain an office or solicit, negotiate, effec-
56 tuate or deposit bail on behalf of another in any city containing a

1 population of more than one hundred seventy-five thousand, such written
2 examination may inquire into the applicant's knowledge of the pertinent
3 provisions of the criminal procedure law and the pertinent rules and
4 practices of the courts and district attorneys' offices within the area
5 of the applicant's proposed operations. Such examination shall be held
6 at such times and places as the superintendent shall determine.

7 (i) Every individual applying to take any written examination shall at
8 the time of applying pay to the superintendent, or at the discretion of
9 the superintendent, directly to any organization that is under contract
10 to provide examination services, an examination fee of an amount which
11 is the actual documented administrative cost of conducting the examina-
12 tion as certified by the superintendent from time to time. An examina-
13 tion fee represents an administrative expense and is not refundable.

14 (j) Every applicant for any such license shall file with the super-
15 intendent a qualifying bond, approved by the attorney general as to form
16 and by the superintendent as to sufficiency, in a penalty of five thou-
17 sand dollars, conditioned upon the faithful performance of the duties of
18 such licensee. No such qualifying bond shall be subject to termination
19 or cancellation by either party in less than sixty days after the giving
20 of written notice to the other party and to the superintendent. A termi-
21 nation or cancellation shall not affect the liability of the surety or
22 sureties on such bond incurred prior to the effective date of such
23 termination or cancellation. If during the term of such bond such licen-
24 see shall be guilty of fraudulent or dishonest conduct or other miscon-
25 duct or malfeasance in his or her dealings with any court or magistrate
26 or with any person or corporation in connection with any deposit or bail
27 bond, the attorney general may maintain an action on such qualifying
28 bond in the name of the people of this state and either recover the full
29 amount of the penalty or recover for the use and benefit of the person
30 or persons aggrieved, the amount of loss or injury sustained by such
31 person or persons by reason of such misconduct. No such recovery or
32 recoveries shall exceed in the aggregate five thousand dollars, exclu-
33 sive of interest and costs.

34 (k) The superintendent may, upon notice and after a hearing, revoke or
35 suspend, for such period as he or she may determine, any such license or
36 sublicense issued pursuant to the provisions of this section if, after
37 notice and hearing as specified in this chapter, he or she determines
38 that the licensee or any sublicensee or any member of a firm or corpo-
39 ration which is so licensed has:

40 (1) violated any provision of, or any obligation imposed by, this
41 chapter, or has violated any other law of the state;

42 (2) has made a material misstatement in the application for such
43 license;

44 (3) has been guilty of any fraudulent or dishonest practices or other
45 misconduct or malfeasance;

46 (4) has charged or received, as premium or compensation for the making
47 of any deposit or immigration bond, any sum in excess of that permitted
48 by law;

49 (5) has required, as a condition of his or her executing an immi-
50 gration bond, that the principal agree to engage the services of a spec-
51 ified attorney; or

52 (6) has demonstrated his or her incompetency or untrustworthiness to
53 act as a licensee.

54 (l) The superintendent, in lieu of revoking or suspending a license in
55 accordance with the provisions of this article, may, in any one proceed-
56 ing, by order, require the licensee to pay to the people of this state a

1 penalty in a sum not exceeding five hundred dollars for each offense,
2 and a penalty in a sum not exceeding twenty-five hundred dollars in the
3 aggregate for all offenses. Upon failure of such licensee to pay such
4 penalty within twenty days after the mailing of such order, postage
5 prepaid, registered, and addressed to the last known place of business
6 of such licensee, unless such order is stayed by a court of competent
7 jurisdiction, the superintendent may revoke the license of such licensee
8 or may suspend the same for such period as he or she may determine.

9 (m) Every license issued to an officer, employee, or agent of an immi-
10 gration bond business pursuant to this section shall be for a term
11 expiring on the thirty-first of December of even numbered years and may
12 be renewed for the ensuing two calendar years upon the filing of a
13 renewal application. The superintendent may refuse to issue any such
14 license if in the superintendent's judgment such refusal will best
15 promote the interests of the people of this state. Every such licensee
16 and sublicensee shall file an information statement on or before the
17 thirty-first of December of each even numbered year, the form and
18 subject matter of which may be prescribed by the superintendent.

19 (n) Any domestic, foreign or alien surety company which was licensed
20 to do an immigration bond business in this state before January first,
21 nineteen hundred forty shall so long as its license or any renewal
22 remains in force, be deemed licensed as an insurer to do such business
23 within the meaning of subsection (b) of section six thousand eight
24 hundred ten of this article and article eleven of this chapter.

25 (o) This section shall not apply to any insurer authorized in this
26 state to execute and issue policies of motor vehicle and aircraft insur-
27 ance as specified in paragraphs thirteen, fourteen and nineteen of
28 subsection (a) of section one thousand one hundred thirteen of this
29 chapter or to any agent of such insurer or to any broker who, as an
30 incident to the execution and issuance of any such policy or to the
31 solicitation, negotiation or procurement thereof undertakes to pay, in
32 addition to the applicable limits of liability, the cost of bail bonds
33 required of the insured because of accident or asserted traffic law
34 violations arising out of the use of a vehicle insured under the terms
35 of the policy, provided the cost of each such bail bond does not exceed
36 one hundred dollars, or who otherwise arranges for the execution of a
37 bail bond or deposit in lieu of cash bail on behalf of the insured in
38 the event of the insured's arrest or detention by reason of an asserted
39 violation of any law relating to the use of a motor vehicle.

40 (p) The superintendent may issue a replacement for a currently in
41 force license which has been lost or destroyed. Before such replacement
42 license shall be issued, there shall be on file in the office of the
43 superintendent a written application for such replacement license,
44 affirming under penalty of perjury that the original license has been
45 lost or destroyed, together with a fee of fifteen dollars.

46 § 6812. Restrictions. (a) No immigration bond business as defined in
47 subsection (a) of section six thousand eight hundred ten of this article
48 shall require the use of an electronic monitoring device as a condition
49 for the provision of such a bond or in exchange for services. For the
50 purposes of this section, an "electronic monitoring device" includes any
51 device that tracks or monitors location, any device that tracks or moni-
52 tors biometric data, or any device that records or transmits video or
53 audio surveillance data.

54 (b) No immigration bond business as defined in subsection (a) of
55 section six thousand eight hundred ten of this article shall provide a
56 referral or contact information for a lawyer or legal services provider

1 that is owned at least partly by the immigration bond business or an
2 entity affiliated with the immigration bond business without:

3 (1) disclosing in writing the source of payment to the lawyer or legal
4 services provider for the services rendered; and

5 (2) including the written statement: "Using this lawyer or legal
6 services provider is not a requirement of bond. If you choose to hire
7 this lawyer or legal services provider, you have the right to fire them
8 at any time and seek your own counsel."

9 § 6813. Premium or compensation. (a) Premium or compensation shall
10 include all fees and payments associated with the payment, underwriting
11 or indemnification of a bond. Such fees and payments shall include, but
12 are not limited to maintenance fees, program fees, and interest rate
13 payments.

14 (b) The premium or compensation for giving bail bond or depositing
15 money or property as bail in an action affecting the non-immigrant,
16 immigrant or citizenship status of a person shall not exceed ten per
17 centum of the amount of such bond or deposit in actions where such bonds
18 or deposits do not exceed the sum of three thousand dollars. Where such
19 bonds or deposits exceed the sum of three thousand dollars, the premium
20 shall not exceed ten per centum of the first three thousand dollars and
21 eight per centum of the excess amount over three thousand dollars up to
22 ten thousand dollars and six per centum of the excess amount over ten
23 thousand dollars.

24 (c) No person or corporation shall:

25 (1) charge or receive, directly or indirectly, any greater compen-
26 sation for making a deposit for an immigration bond, or act in such
27 business as aforesaid without obtaining a license, or

28 (2) accept any fee or compensation for obtaining a license or for
29 obtaining an immigration bail bond. Such person or corporation shall be
30 guilty of a misdemeanor and in addition shall in any action brought to
31 recover any such overcharge be liable for treble damages.

32 § 6814. Civil action by private party; damages; attorney fees. Any
33 person who has been injured by reason of any violation of this article
34 may bring an action in his or her own name to enjoin such unlawful act
35 or practice, an action to recover treble his or her actual damages, or
36 both such actions. The court shall award reasonable attorney's fees and
37 costs to a prevailing plaintiff.

38 § 6815. Severability clause. If any clause, sentence, paragraph,
39 subsection, section or part of this article shall be adjudged by any
40 court of competent jurisdiction to be invalid, such judgment shall not
41 affect, impair, or invalidate the remainder thereof, but shall be
42 confined in its operation to the clause, sentence, paragraph,
43 subsection, section or part thereof directly involved in the controversy
44 in which such judgment shall have been rendered. It is hereby declared
45 to be the intent of the legislature that this article would have been
46 enacted even if such invalid provisions had not been included herein.

47 § 6816. Regulations. The superintendent shall promulgate regulations
48 implementing the provisions of this article, or any other regulations
49 allowed by law that advances the safety, health and interests of consum-
50 ers.

51 § 2. This act shall take effect on the sixtieth day after it shall
52 have become a law. Effective immediately, the addition, amendment
53 and/or repeal of any rule or regulation necessary for the implementation
54 of this act on its effective date are authorized to be made and
55 completed on or before such effective date.