

STATE OF NEW YORK

7770--B

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. EPSTEIN, TAYLOR, QUART, SEAWRIGHT, KELLES, GONZALEZ-ROJAS, CRUZ, FORREST, GOTTFRIED, SIMON, REYES, BURGOS, JACKSON, MEEKS, STECK, TAPIA, RAMOS, FERNANDEZ, AUBRY, GIBBS, SOLAGES -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to an immigration bail 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 section 1123
2 to read as follows:

3 § 1123. Immigration bail business. (a)(1) Any person, firm, corpo-
4 ration, or other entity who shall for another deposit money or property
5 as bail or execute as surety any bond in any immigration action or
6 proceeding who within a period of one month prior thereto shall have
7 made such a deposit or given such bail in more than two cases not aris-
8 ing out of the same transaction shall be deemed to be doing an immi-
9 gration bail business as defined in this section and doing an insurance
10 business as defined in this article.

11 (2) Except for a corporation authorized to write fidelity and surety
12 insurance and to do an immigration bail business pursuant to the
13 provisions of this article and otherwise in compliance with all other
14 requirements of this chapter to do such business, no person, firm,
15 corporation, or other entity shall engage in an immigration bail busi-
16 ness in this state.

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

LBD09647-05-2

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

5 (2) The superintendent may authorize a property/casualty insurance
6 company that is authorized to write fidelity and surety insurance to do
7 an immigration bail business in accordance with the provisions of this
8 article, but no individual or entity shall be licensed to do such busi-
9 ness.

10 (c) Any person, firm, corporation, or other entity that violates this
11 section shall be subject to the penalty set forth in subsection (a) of
12 section one thousand one hundred two of this article.

13 (d) Any person who has been injured by reason of any violation of this
14 section may bring an action in his or her own name to enjoin such unlaw-
15 ful act or practice, an action to recover treble his or her actual
16 damages, or both such actions. The court shall award reasonable attor-
17 ney's fees and costs to a prevailing plaintiff.

18 § 2. The insurance law is amended by adding a new section 2140 to
19 read as follows:

20 § 2140. Restrictions on insurance producers procuring immigration
21 bonds. (a) No insurance producer shall require the use of an electronic
22 monitoring device as a condition of immigration bail. For the purposes
23 of this section, an "electronic monitoring device" includes any device
24 that tracks or monitors location, any device that tracks or monitors
25 biometric data, or any device that records or transmits video or audio
26 surveillance data.

27 (b) No insurance producer shall make a referral to or provide contact
28 information for a legal services provider without:

29 (1) disclosing in writing, in a language understood by the consumer,
30 whether the insurance producer or an entity that is an affiliate of the
31 insurance producer: (A) has a financial or ownership interest in the
32 legal services provider; (B) is receiving any compensation, either
33 directly or indirectly, for making a referral to or providing contact
34 information for the legal services provider; or (C) is compensating,
35 either directly or indirectly, the legal services provider for the legal
36 services rendered; and

37 (2) stating that: "The payment of premiums to the insurance producer
38 is not for and does not guarantee that you will receive legal represen-
39 tation. Using this legal services provider is not a requirement of
40 bail. If you choose to hire this legal services provider, you have the
41 right to fire the provider at any time and retain your own counsel."

42 (c) Any person who has been injured by reason of any violation of this
43 section may bring an action in his or her own name to enjoin such unlaw-
44 ful act or practice, an action to recover treble his or her actual
45 damages, or both such actions. The court shall award reasonable attor-
46 ney's fees and costs to a prevailing plaintiff.

47 § 3. The insurance law is amended by adding a new section 2312 to read
48 as follows:

49 § 2312. Immigration bond premium. (a) The premium for giving an immi-
50 gration bond or depositing money or property as immigration bail in any
51 court having immigration jurisdiction or in any immigration action or
52 proceeding shall not exceed ten per centum of the amount of such bond or
53 deposit in actions where such bonds or deposits do not exceed the sum of
54 three thousand dollars. Where such bonds or deposits exceed the sum of
55 three thousand dollars, the premium shall not exceed ten per centum of
56 the first three thousand dollars and eight per centum of the excess

1 amount over three thousand dollars up to ten thousand dollars and six
2 per centum of the excess amount over ten thousand dollars.

3 (b) No person, firm, corporation, or other entity, including an insur-
4 ance producer, shall:

5 (1) charge, collect, or receive, directly or indirectly, any fee or
6 compensation in connection with an immigration bail deposit or immi-
7 gration bond, other than the premium based on rates subject to the maxi-
8 mum specified in subsection (a) of this section and filed with the
9 superintendent by the insurer pursuant to this article, notwithstanding
10 subsection (c) of section two thousand one hundred nineteen of this
11 chapter; or

12 (2) accept any fee or compensation for obtaining a license or for
13 obtaining an insurance producer or immigration bond or for an immi-
14 gration bail deposit.

15 (c) Any person, firm, corporation, or other entity that violates this
16 section shall be guilty of a misdemeanor. An indemnitor may maintain a
17 cause of action in a court of competent jurisdiction against any person,
18 firm, corporation, or other entity to recover any fee or compensation in
19 excess of the amount authorized pursuant to this section. The person,
20 firm, corporation, or other entity shall, in any action brought by an
21 indemnitor to recover any such overcharge, be liable for treble damages.

22 (d) Any person who has been injured by reason of any violation of this
23 section may bring an action in his or her own name to enjoin such unlaw-
24 ful act or practice, an action to recover treble his or her actual
25 damages, or both such actions. The court shall award reasonable attor-
26 ney's fees and costs to a prevailing plaintiff.

27 § 4. Severability clause. If any clause, sentence, paragraph,
28 subsection, section or part of this act shall be adjudged by any court
29 of competent jurisdiction to be invalid, such judgment shall not affect,
30 impair, or invalidate the remainder thereof, but shall be confined in
31 its operation to the clause, sentence, paragraph, subsection, section or
32 part thereof directly involved in the controversy in which such judgment
33 shall have been rendered. It is hereby declared to be the intent of the
34 legislature that this act would have been enacted even if such invalid
35 provisions had not been included herein.

36 § 5. This act shall take effect on the sixtieth day after it shall
37 have become a law. Effective immediately, the addition, amendment
38 and/or repeal of any rule or regulation necessary for the implementation
39 of this act on its effective date are authorized to be made and
40 completed on or before such effective date.