

STATE OF NEW YORK

7475--A

2021-2022 Regular Sessions

IN SENATE

October 27, 2021

Introduced by Sens. BAILEY, BIAGGI, CLEARE, MYRIE, PARKER, RAMOS, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- 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:

Section 1. The insurance law is amended by adding a new section 1123 to read as follows:

§ 1123. Immigration bail business. (a)(1) Any person, firm, corporation, or other entity who shall for another deposit money or property as bail or execute as surety any bond in any immigration action or proceeding who within a period of one month prior thereto shall have made such a deposit or given such bail in more than two cases not arising out of the same transaction shall be deemed to be doing an immigration bail business as defined in this section and doing an insurance business as defined in this article.

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

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

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

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

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

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

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

16 § 2140. Restrictions on insurance producers procuring immigration
17 bonds. (a) No insurance producer shall require the use of an electronic
18 monitoring device as a condition of immigration bail. For the purposes
19 of this section, an "electronic monitoring device" includes any device
20 that tracks or monitors location, any device that tracks or monitors
21 biometric data, or any device that records or transmits video or audio
22 surveillance data.

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

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

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

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

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

45 § 2312. Immigration bond premium. (a) The premium for giving an immi-
46 gration bond or depositing money or property as immigration bail in any
47 court having immigration jurisdiction or in any immigration action or
48 proceeding shall not exceed ten per centum of the amount of such bond or
49 deposit in actions where such bonds or deposits do not exceed the sum of
50 three thousand dollars. Where such bonds or deposits exceed the sum of
51 three thousand dollars, the premium shall not exceed ten per centum of
52 the first three thousand dollars and eight per centum of the excess
53 amount over three thousand dollars up to ten thousand dollars and six
54 per centum of the excess amount over ten thousand dollars.

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

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

8 (2) accept any fee or compensation for obtaining a license or for
9 obtaining an insurance producer or immigration bond or for an immi-
10 gration bail deposit.

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

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

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

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