S T A T E O F N E W Y O R K

10640--B

I N A S S E M B L Y

June 12, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Aubry, Boyle, Heastie, Lentol, Lifton) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to charitable bail organizations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1108 of the insurance law is amended by adding a new subsection (k) to read as follows:

(K) A CHARITABLE BAIL ORGANIZATION HOLDING A CERTIFICATE ISSUED BY THE SUPERINTENDENT PURSUANT TO SECTION SIX THOUSAND EIGHT HUNDRED FIVE OF THIS CHAPTER.

S 2. Subsections (a) and (b) of section 6801 of the insurance law are amended to read as follows:

(a) (1) Any person, firm or corporation in any court having criminal jurisdiction or in any criminal action or proceeding who shall for another deposit money or property as bail or execute as surety any bail bond 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 a bail [bond] business and doing an insurance business as defined in article eleven of this chapter.

(2) Except for a corporation authorized to write fidelity and surety insurance and to do a bail [bond] business pursuant to the provisions of article eleven of this chapter and otherwise in compliance with all other requirements of this chapter to do such business OR A CHARITABLE BAIL ORGANIZATION HOLDING A CERTIFICATE ISSUED BY THE SUPERINTENDENT PURSUANT TO SECTION SIX THOUSAND EIGHT HUNDRED FIVE OF THIS ARTICLE AND OTHERWISE IN COMPLIANCE WITH ALL OTHER REQUIREMENT OF THIS CHAPTER, no

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

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person, firm or corporation shall engage in [such] A BAIL business IN THIS STATE.

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

(2) The superintendent may authorize a property/casualty insurance company which is authorized to write fidelity and surety insurance to do a bail [bond] business in accordance with the provisions of article eleven of this chapter, but no individual shall be licensed to do such business.

S 3. Subsections (a), (b), (c), (h) and (m) of section 6802 of the insurance law, subsection (m) as amended by chapter 285 of the laws of 1993, are amended to read as follows:

(a) No person, firm or corporation or any officer or employee thereof shall act in this state as an agent or solicitor of an insurer OR CHARITABLE BAIL ORGANIZATION doing a bail [bond] business in soliciting, negotiating or effectuating any such deposit or bail bond by such insurer OR CHARITABLE BAIL ORGANIZATION unless licensed by the superintendent as an agent pursuant to the provisions of this section. Any person, firm or corporation so acting without being duly licensed shall be guilty of a misdemeanor.

(b) Every corporation OR CHARITABLE BAIL ORGANIZATION engaging as an insurer [in the business of giving] DOING A bail BUSINESS IN THIS STATE shall procure a license pursuant to the provisions of this section for each of its employees, officers and agents acting for it in soliciting, negotiating or effectuating any such deposit or bail bond.

(c) The superintendent may, in [his] THE SUPERINTENDENT'S discretion, issue to any person, firm or corporation a license to act as an agent of an authorized insurer OR CHARITABLE BAIL ORGANIZATION, in soliciting, negotiating or effectuating any such deposit or bail bond by such insurer OR ANY SUCH DEPOSIT BY SUCH CHARITABLE BAIL ORGANIZATION.

(h) In order to determine the competence of each applicant for a license or a sublicense, the superintendent shall require every applicant to pass to the satisfaction of the superintendent a written examination to be prepared by the superintendent and appropriate to the doing of a bail [bond] business. If the applicant or any proposed sublicensee intends to maintain an office or solicit, negotiate, effectuate or deposit bail on behalf of another in any city containing a population of more than one hundred seventy-five thousand, such written examination may inquire into the applicant's knowledge of the pertinent provisions of the criminal procedure law and the pertinent rules and practices of the courts and district attorneys' offices within the area of the applicant's proposed operations. Such examination shall be held at such times and places as the superintendent shall determine.

(m) Every license issued to an officer, employee, or agent of an insurer OR CHARITABLE BAIL ORGANIZATION doing a bail [bond] business pursuant to this section shall be for a term expiring on the thirty-first day of December of even numbered years and may be renewed for the ensuing two calendar years upon the filing of a renewal application. The superintendent may refuse to issue any such license if in [his] THE SUPERINTENDENT'S judgment such refusal will best promote the interests of the people of this state. Every such licensee and sublicensee shall file an information statement on or before the thirty-first day of December of each even numbered year, the form and subject matter of which may be prescribed by the superintendent.

S 4. Section 6803 of the insurance law is amended to read as follows:

S 6803. Bail bond business; cities in excess of one hundred seventy-five thousand. (a) An insurance corporation OR CHARITABLE BAIL ORGANIZATION engaged in the BAIL business [of giving bail] in a city containing a population of more than one hundred seventy-five thousand inhabitants, according to the last preceding federal census or state enumeration, shall file with the district attorney of each county contained in such city or in which such a city is contained, the clerks of the supreme and county courts and the clerk of the criminal court of the city of New York, certified statements of the names of all persons authorized to execute bail bonds OR EFFECTUATING SUCH DEPOSIT on its behalf or to solicit such business as agent, together with a certificate duly executed by the superintendent, certifying with respect to each such person, that such person has been licensed by the superintendent pursuant to section six thousand eight hundred two of this article.

(b) The court or other public officer concerned in the matter may examine under oath any insurer OR CHARITABLE BAIL ORGANIZATION doing a bail [bond] business or a depositor of security for bail, or the officer or agent of any such insurer, CHARITABLE BAIL ORGANIZATION or depositor proposing to execute a bail bond, or to make such deposit, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the deposit or bail bond and as to the fee charged, IF ANY, for the giving of such bond. The court or other public officer concerned in the matter may refuse to accept such bond or deposit if satisfied that any portion of such security has been feloniously obtained by the defendant, or that the provisions of this or any other section of law have been violated, or that the person or persons indemnifying such insurer or depositor shall have within a period of one month prior thereto given indemnification or security for like purpose in more than two cases not arising out of the same transaction and that such person is not duly licensed by the superintendent in accordance with the provisions of this chapter.

S 5. The insurance law is amended by adding a new section 6805 to read as follows:

S 6805. CHARITABLE BAIL ORGANIZATION. (A)(1) THE SUPERINTENDENT MAY ISSUE A CERTIFICATE TO A CHARITABLE BAIL ORGANIZATION TO DEPOSIT MONEY AS BAIL FOR ANOTHER IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION ONLY IF SUCH ENTITY IS A NON-PROFIT ORGANIZATION ORGANIZED PURSUANT TO THE UNITED STATES INTERNAL REVENUE CODE AS DESCRIBED BY SECTION 501(C)(3) OF TITLE 26 OF THE UNITED STATES CODE, IS REGISTERED AS A CHARITY PURSUANT TO ARTICLE SEVEN-A OF THE EXECUTIVE LAW AND IS CURRENT ON SUCH REGISTRATION.

(2) THE APPLICATION FOR A CHARITABLE BAIL ORGANIZATION CERTIFICATE SHALL BE IN SUCH FORM OR FORMS, AND SHALL CONTAIN RELEVANT INFORMATION, AS THE SUPERINTENDENT SHALL PRESCRIBE.

(3) THE SUPERINTENDENT MAY REFUSE TO ISSUE A CHARITABLE BAIL ORGANIZATION CERTIFICATE IF, IN THE SUPERINTENDENT'S JUDGMENT, AN APPLICANT, OR AN OFFICER OR DIRECTOR OF THE APPLICANT, HAS: (A) DEMONSTRATED UNTRUSTWORTHINESS OR INCOMPETENCE; (B) GIVEN CAUSE FOR THE REVOCATION OR SUSPENSION OF THE CERTIFICATE; OR (C) FAILED TO COMPLY WITH ANY PREREQUISITE FOR THE ISSUANCE OF THE CERTIFICATE.

(4) A CHARITABLE BAIL ORGANIZATION CERTIFICATE SHALL BE VALID FOR A TERM OF FIVE YEARS FROM ISSUANCE. AT THE TIME OF APPLICATION FOR EVERY SUCH CERTIFICATE, AND FOR EVERY RENEWAL THEREOF, AN APPLICANT SHALL PAY TO THE SUPERINTENDENT A SUM OF ONE THOUSAND DOLLARS PAYABLE EACH TERM OR

FRACTION OF A TERM, PROVIDED, HOWEVER, THAT IN HIS OR HER DISCRETION, THE SUPERINTENDENT MAY WAIVE SUCH FEE.

(5) IF AN APPLICATION FOR A RENEWAL CERTIFICATE SHALL HAVE BEEN FILED WITH THE SUPERINTENDENT BEFORE THE EXPIRATION OF SUCH CERTIFICATE, THEN THE CERTIFICATE SOUGHT TO BE RENEWED SHALL CONTINUE IN FULL FORCE AND EFFECT EITHER UNTIL THE ISSUANCE BY THE SUPERINTENDENT OR THE RENEWAL CERTIFICATE APPLIED FOR OR UNTIL FIVE DAYS AFTER THE SUPERINTENDENT SHALL HAVE REFUSED TO ISSUE SUCH RENEWAL CERTIFICATE.

(6) THE SUPERINTENDENT MAY REFUSE TO RENEW OR MAY REVOKE OR SUSPEND A CHARITABLE BAIL ORGANIZATION CERTIFICATE FOR A REASONABLE PERIOD DETERMINED BY THE SUPERINTENDENT IF, AFTER NOTICE AND HEARING, THE SUPERINTENDENT DETERMINES THAT AN APPLICANT OR LICENSEE, OR AN OFFICER OR DIRECTOR OF THE APPLICANT OR LICENSEE, HAS: (A) DEMONSTRATED UNTRUSTWORTHINESS OR INCOMPETENCE; (B) VIOLATED THIS SECTION OR AUTHORIZED REGULATIONS PROMULGATED THEREUNDER; OR (C) FAILED TO STAY CURRENT WITH THEIR REGISTRATION AS A CHARITY PURSUANT TO ARTICLE SEVEN-A OF THE EXECUTIVE LAW. ANY HEARING CONDUCTED UNDER THIS SECTION SHALL COMPLY WITH THE REQUIREMENTS OF SECTION THREE HUNDRED FIVE OF THE FINANCIAL SERVICES LAW.

(B) A CHARITABLE BAIL ORGANIZATION SHALL:

(1) ONLY DEPOSIT MONEY AS BAIL IN THE AMOUNT OF TWO THOUSAND DOLLARS OR LESS FOR A DEFENDANT CHARGED WITH ONE OR MORE MISDEMEANORS, PROVIDED, HOWEVER, THAT SUCH ORGANIZATION SHALL NOT EXECUTE AS SURETY ANY BOND FOR ANY DEFENDANT;

(2) ONLY DEPOSIT MONEY AS BAIL ON BEHALF OF A PERSON WHO IS FINANCIALLY UNABLE TO POST BAIL, WHICH MAY CONSTITUTE A PORTION OR THE WHOLE AMOUNT OF SUCH BAIL;

(3) ONLY DEPOSIT MONEY AS BAIL IN ONE COUNTY IN THIS STATE. PROVIDED, HOWEVER, THAT A CHARITABLE BAIL ORGANIZATION WHOSE PRINCIPAL PLACE OF BUSINESS IS LOCATED WITHIN A CITY OF A MILLION OR MORE MAY DEPOSIT MONEY AS BAIL IN THE FIVE COUNTIES COMPRISING SUCH CITY; AND

(4) NOT CHARGE A PREMIUM OR RECEIVE COMPENSATION FOR ACTING AS A CHARITABLE BAIL ORGANIZATION.

(C) THE SUPERINTENDENT MAY PROMULGATE REGULATIONS IMPLEMENTING THIS SECTION.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.