

3875

2011-2012 Regular Sessions

I N S E N A T E

March 8, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to educating foreign women entering this country as prospective spouses about the history of the men they may be marrying and their rights as residents of the United States if they become victims of domestic violence

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "International Marriage Brokers Act".
3 S 2. Legislative findings. In 1999, the Immigration and Naturalization
4 Service commissioned a study that found more than 200 international
5 marriage brokers operating around the globe, arranging between 4,000 and
6 6,000 marriages between American men and foreign women every year.
7 Today, the number of international marriage brokers is nearly 500 world-
8 wide and, based on the 1999 statistics, 20,000 to 30,000 women have
9 entered the United States using an international marriage broker in the
10 past five years. In 1993, the Commonwealth Fund estimated that seven
11 percent of American women who are married or living with someone are
12 physically abused in a year's time, and that the incidence is higher in
13 mail-order marriages. The purpose of this act is to regulate interna-
14 tional marriage brokers and to inform prospective wives of the history
15 of the men they may be marrying and their rights as residents of the
16 United States if they become victims of domestic violence.
17 S 3. The general business law is amended by adding a new article 28-CC
18 to read as follows:

19 ARTICLE 28-CC

20 INTERNATIONAL MARRIAGE BROKERS ACT

21 SECTION 470. DEFINITIONS.

22 471. DUTIES AND RESPONSIBILITY OF INTERNATIONAL MARRIAGE
23 BROKERS.

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

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472. FINANCIAL OBLIGATIONS OF INTERNATIONAL MARRIAGE BROKERS.
473. PENALTIES.
474. ENFORCEMENT.

S 470. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "BASIC RIGHTS INFORMATION PAMPHLET" SHALL MEAN A PAMPHLET, OR OTHER SIMILAR FORM OF WRITTEN MATERIAL, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

(A) EMERGENCY TELEPHONE NUMBERS FOR LAW ENFORCEMENT AND THE FIRE DEPARTMENT WHERE THE RECRUIT WILL BE RESIDING,

(B) THE CLIENT'S MARITAL STATUS, INCLUDING THE NUMBER OF TIMES SHE OR HE HAS BEEN MARRIED, AND THE NUMBER OF K VISAS THAT SHE OR HE HAS APPLIED FOR OVER HER OR HIS LIFETIME, ISSUED UNDER 8 U.S.C. SEC. 1184,

(C) IMMIGRATION RELIEF AVAILABLE TO IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, TRAFFICKING, AND OTHER CRIMES UNDER THE FEDERAL VIOLENCE AGAINST WOMEN ACT OF 1994 (TITLE IV, P.L. 103-322) AND SECTIONS 101(A)(15)(T) AND 101(A)(15)(U) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT (8 U.S.C. SEC. 1101 ET SEQ.),

(D) INFORMATION ON THE WARNING SIGNS OF DOMESTIC VIOLENCE, AND

(E) DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES IN NEW YORK STATE AND THE UNITED STATES, INCLUDING, BUT NOT LIMITED TO, THE TRAFFICKING INFORMATION AND REFERRAL HOTLINE, THE NATIONAL WOMEN'S HEALTH INFORMATION CENTER, THE NATIONAL DOMESTIC VIOLENCE HOTLINE AND THE NATIONAL SEXUAL ASSAULT HOTLINE.

2. "CLIENT" SHALL MEAN A PERSON WHO IS A RESIDENT OF THE STATE OF NEW YORK WHO CONTRACTS WITH AN INTERNATIONAL MARRIAGE BROKER TO MEET RECRUITS.

3. "INTERNATIONAL MARRIAGE BROKER" SHALL MEAN ANY PERSON, CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, OR ANY OTHER LEGAL ENTITY THAT DOES BUSINESS IN THE STATE OF NEW YORK FOR A FEE TO RESIDENTS OF THE STATE OF NEW YORK OFFERING MATRIMONIAL OR RELATED SERVICES INVOLVING SOLICITING RECRUITS BY DOING ANY OF THE FOLLOWING IN STATE:

(A) EXCHANGING PHOTOGRAPHS, NAMES, TELEPHONE NUMBERS, ADDRESSES, OR STATISTICS; AND

(B) PROVIDING A SOCIAL ENVIRONMENT FOR INTRODUCING CLIENTS TO RECRUITS IN A COUNTRY OTHER THAN THE UNITED STATES.

4. "RECRUIT" SHALL MEAN A PERSON WHO IS NOT A CITIZEN OR RESIDENT OF THE UNITED STATES AND WHO IS RECRUITED BY AN INTERNATIONAL MARRIAGE BROKER FOR THE PURPOSE OF PROVIDING MATRIMONIAL OR RELATED SERVICES.

S 471. DUTIES AND RESPONSIBILITY OF INTERNATIONAL MARRIAGE BROKERS. 1. PRIOR TO THE RELEASE OF ANY PERSONAL CONTACT INFORMATION OF A RECRUIT TO ANY THIRD PARTY, AN INTERNATIONAL MARRIAGE BROKER SHALL OBTAIN FROM THE RECRUIT A SIGNED WRITTEN CONSENT FORM, IN THE RECRUIT'S PRIMARY LANGUAGE, AUTHORIZING THE RELEASE OF THE RECRUIT'S PERSONAL CONTACT INFORMATION TO THE SPECIFIC THIRD PARTY.

2. AN INTERNATIONAL MARRIAGE BROKER SHALL PROVIDE THE RECRUIT WITH A BASIC RIGHTS INFORMATION PAMPHLET, AS REQUIRED BY SECTION FOUR HUNDRED SEVENTY OF THIS ARTICLE, AT THE INITIAL CONTACT BETWEEN THE RECRUIT AND THE INTERNATIONAL MARRIAGE BROKER, ITS EMPLOYEES OR AGENTS.

3. THE INFORMATION IN SUBDIVISION TWO OF THIS SECTION SHALL BE PROVIDED IN THE RECRUIT'S PRIMARY LANGUAGE AND THE BASIC RIGHTS INFORMATION PAMPHLET SHALL BE DISPLAYED SEPARATELY FROM ANY OTHER INFORMATION.

4. AN INTERNATIONAL MARRIAGE BROKER SHALL REFRAIN FROM PROVIDING ANY FURTHER SERVICES TO THE RECRUIT OR CLIENT UNTIL THE INTERNATIONAL MARRIAGE BROKER HAS OBTAINED AND PROVIDED THE RECRUIT THE INFORMATION DESCRIBED IN SUBDIVISIONS ONE, TWO AND THREE OF THIS SECTION.

1 S 472. FINANCIAL OBLIGATIONS OF INTERNATIONAL MARRIAGE BROKERS. 1.
2 PRIOR TO ENGAGING IN THE BUSINESS OF OR ACTING IN THE CAPACITY OF AN
3 INTERNATIONAL MARRIAGE BROKER, EVERY INTERNATIONAL MARRIAGE BROKER SHALL
4 FILE WITH THE SECRETARY OF STATE A SURETY BOND TO THE PEOPLE OF NEW YORK
5 NOT TO EXCEED A PENAL SUM OF FIFTY THOUSAND DOLLARS AND EXECUTED BY A
6 SURETY COMPANY DULY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE. SUCH
7 SURETY BOND SHALL BE CONDITIONED UPON THE INTERNATIONAL MARRIAGE
8 BROKER'S COMPLIANCE WITH THE REQUIREMENTS SET FORTH WITHIN THIS ARTICLE
9 AND ANY OTHER RULES AND REGULATIONS PRESCRIBED BY THE SECRETARY OF STATE
10 PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND CONDITIONED UPON THE
11 PAYMENT OF ANY RESULTING FINES AND PENALTIES OF SUCH NONCOMPLIANCE WITH
12 THE PROVISIONS OF THIS ARTICLE. SUCH SURETY BOND SHALL ALSO BE CONDI-
13 TIONED UPON PAYMENT OF JUDGMENTS RENDERED AGAINST THE INTERNATIONAL
14 MARRIAGE BROKER, OR PRINCIPAL OF THE BOND, FOR ANY ACTION BROUGHT BY A
15 PERSON FOR FRAUD, MISSTATEMENT, MISREPRESENTATION, DECEIT, OR ANY OTHER
16 UNLAWFUL ACT OR OMISSION OF THE INTERNATIONAL MARRIAGE BROKER OR THE
17 AGENTS OR EMPLOYEES OF SUCH BROKER. SUCH SURETY BOND SHALL BE MAIN-
18 TAINED FOR THE DURATION OF THE BUSINESS AND FOR THREE YEARS SUCCEEDING
19 THE DISSOLUTION OF THE BUSINESS. PROOF OF SUCH BOND SHALL BE PROVIDED TO
20 THE SECRETARY OF STATE ON A BIENNIAL BASIS.

21 2. UPON A FINAL JUDGMENT RENDERED AGAINST THE PRINCIPAL OF THE BOND
22 FOR FAILURE OF THE INTERNATIONAL MARRIAGE BROKER TO COMPLY WITH THE
23 REQUIREMENTS AND CONDITIONS SET FORTH IN SUBDIVISION ONE OF THIS
24 SECTION, THE SURETY BOND SHALL BE SATISFIED BY PAYMENT OF THE JUDGMENT
25 TO THE PEOPLE OF THE STATE AND SUCH MONEYS SHALL BE APPROPRIATED SOLELY
26 FOR THE BENEFIT OF THE OBLIGEE AND FOR THE PURPOSE OF COMPENSATING THE
27 OBLIGEE FOR DAMAGES AND COSTS INCURRED FROM THE INTERNATIONAL MARRIAGE
28 BROKER'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE.

29 3. AN INTERNATIONAL MARRIAGE BROKER SHALL BE REQUIRED TO FILE A SURETY
30 BOND AND A DISCLOSURE FORM WITH THE SECRETARY OF STATE. THE DISCLOSURE
31 FORM SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION, INCLUDING BUT NOT
32 LIMITED TO:

33 (A) THE INTERNATIONAL MARRIAGE BROKER'S NAME, BUSINESS ADDRESS, AND
34 BUSINESS TELEPHONE NUMBER.

35 (B) IF APPLICABLE, THE NAME, BUSINESS ADDRESS, AND BUSINESS TELEPHONE
36 NUMBER OF THE CORPORATION OR PARTNERSHIP EMPLOYED BY THE INTERNATIONAL
37 MARRIAGE BROKER.

38 (C) ALL INTERNET WEB SITE ADDRESSES AND DOMAIN NAMES OWNED OR OPERATED
39 BY THE INTERNATIONAL MARRIAGE BROKER.

40 (D) EACH PERSON, INCLUDING THE BROKER'S EMPLOYEES AND AGENTS, ENGAGED
41 IN THE BUSINESS OR ACTING IN THE CAPACITY OF AN INTERNATIONAL MARRIAGE
42 BROKER SHALL SUBMIT WITH THE DISCLOSURE FORM A COPY OF A VALID AND
43 CURRENT PHOTO IDENTIFICATION TO DETERMINE THE INTERNATIONAL MARRIAGE
44 BROKER'S IDENTITY, SUCH AS A NEW YORK STATE DRIVER'S LICENSE OR ANY
45 OTHER IDENTIFICATION ACCEPTABLE TO THE SECRETARY OF STATE.

46 (E) A COPY OF EACH VERSION OF THE BASIC RIGHTS INFORMATION THAT HAS
47 BEEN TRANSLATED INTO A LANGUAGE OTHER THAN ENGLISH, AS REQUIRED BY
48 SECTION FOUR HUNDRED SEVENTY OF THIS ARTICLE.

49 4. AN INTERNATIONAL MARRIAGE BROKER SHALL NOTIFY THE DEPARTMENT OF
50 STATE IN WRITING WITHIN THIRTY DAYS FROM THE DATE THE SURETY BOND
51 REQUIRED BY SUBDIVISION ONE OF THIS SECTION IS RENEWED WITH THE SURETY
52 COMPANY OR OBTAINED WITH A NEW SURETY COMPANY, AND OF ANY CHANGE OF
53 NAME, ADDRESS, TELEPHONE NUMBER, OR AGENT OF THE INTERNATIONAL MARRIAGE
54 BROKER.

55 5. THE SECRETARY OF STATE SHALL POST SUCH INFORMATION SUBMITTED BY AN
56 INTERNATIONAL MARRIAGE BROKER ON THE DEPARTMENT'S WEB SITE REQUIRED BY

1 SUBDIVISION THREE OF THIS SECTION. THE SECRETARY OF STATE SHALL ENSURE
2 ONCE A YEAR THAT SUCH INFORMATION IS CURRENT.

3 6. THE SECRETARY OF STATE SHALL DEVELOP THE DISCLOSURE FORM REQUIRED
4 TO FILE A BOND UNDER SUBDIVISION THREE OF THIS SECTION AND MAKE IT
5 AVAILABLE TO ANY INTERNATIONAL MARRIAGE BROKER FILING A BOND PURSUANT TO
6 SUBDIVISION ONE OF THIS SECTION.

7 7. THE SECRETARY OF STATE SHALL CHARGE AND COLLECT A FILING FEE TO
8 COVER THE COST OF FILING THE BOND.

9 S 473. PENALTIES. 1. (A) AN INTERNATIONAL MARRIAGE BROKER WHO VIOLATES
10 THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE
11 HUNDRED THOUSAND DOLLARS FOR EACH VIOLATION, TO BE ASSESSED AND
12 COLLECTED IN A CIVIL ACTION BROUGHT BY ANY PERSON INJURED BY THE
13 VIOLATION OR IN A CIVIL ACTION BROUGHT IN THE NAME OF THE PEOPLE OF THE
14 STATE OF NEW YORK BY THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY OR
15 THE CITY ATTORNEY HAVING JURISDICTION OVER THE MATTER. AN ACTION BROUGHT
16 IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK SHALL NOT PRECLUDE AN
17 ACTION BEING BROUGHT BY AN INJURED PERSON.

18 (B) ANY ACTION BROUGHT PURSUANT TO THIS SECTION BY THE ATTORNEY GENER-
19 AL, DISTRICT ATTORNEY, OR CITY ATTORNEY MAY SEEK RELIEF FOR ANY
20 VIOLATIONS OF THIS ARTICLE COMMITTED BY AN INTERNATIONAL MARRIAGE BROKER
21 INCLUDING INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE RELIEF
22 AGAINST THE INTERNATIONAL MARRIAGE BROKER IN THE NAME OF THE PEOPLE OF
23 THE STATE OF NEW YORK.

24 2. A PERSON CLAIMING TO BE AGGRIEVED BY A VIOLATION OF THIS ARTICLE BY
25 AN INTERNATIONAL MARRIAGE BROKER MAY BRING A CIVIL ACTION FOR INJUNCTIVE
26 RELIEF OR DAMAGES, OR BOTH. IF THE COURT FINDS THAT THE DEFENDANT HAS
27 VIOLATED A PROVISION OF THIS ARTICLE, IT SHALL AWARD ACTUAL DAMAGES,
28 PLUS AN AMOUNT EQUAL TO TREBLE THE AMOUNT OF ACTUAL DAMAGES OR ONE THOU-
29 SAND DOLLARS PER VIOLATION, WHICHEVER IS GREATER. THE COURT SHALL ALSO
30 GRANT TO THE PREVAILING PLAINTIFF REASONABLE ATTORNEYS' FEES AND LEGAL
31 COSTS.

32 3. WHEN ANY CLAIM OR CLAIMS AGAINST A BOND HAVE BEEN PAID SO AS TO
33 REDUCE THE PRINCIPAL AMOUNT OF THE BOND REMAINING AVAILABLE TO PAY
34 CLAIMS BELOW THE PRINCIPAL AMOUNT REQUIRED BY SECTION FOUR HUNDRED
35 SEVENTY-TWO OF THIS ARTICLE, THE INTERNATIONAL MARRIAGE BROKER SHALL
36 CEASE TO CONDUCT ANY BUSINESS WITHIN THE STATE UNLESS AND UNTIL THE BOND
37 HAS BEEN REINSTATED UP TO THE MINIMUM AMOUNT REQUIRED BY SECTION FOUR
38 HUNDRED SEVENTY-TWO OF THIS ARTICLE.

39 S 474. ENFORCEMENT. THE SECRETARY OF STATE SHALL ENFORCE THE
40 PROVISIONS OF THIS CHAPTER THAT GOVERN THE FILING AND MAINTENANCE OF
41 SURETY BONDS AND SHALL PROMULGATE ANY RULES AND REGULATIONS PERTAINING
42 TO THE POSTING OF SUCH BONDS.

43 S 4. This act shall take effect on the one hundred eightieth day after
44 it shall have become a law.