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

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:

Section 1. Short title. This act shall be known and may be cited as the "International Marriage Brokers Act".

S 2. Legislative findings. In 1999, the Immigration and Naturalization Service commissioned a study that found more than 200 international marriage brokers operating around the globe, arranging between 4,000 and 6,000 marriages between American men and foreign women every year. Today, the number of international marriage brokers is nearly 500 worldwide and, based on the 1999 statistics, 20,000 to 30,000 women have entered the United States using an international marriage broker in the past five years. In 1993, the Commonwealth Fund estimated that seven percent of American women who are married or living with someone are physically abused in a year's time, and that the incidence is higher in mail-order marriages. The purpose of this act is to regulate international marriage brokers and to inform prospective wives of 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.

S 3. The general business law is amended by adding a new article 28-CC to read as follows:

ARTICLE 28-CC

INTERNATIONAL MARRIAGE BROKERS ACT

SECTION 470. DEFINITIONS.

471. DUTIES AND RESPONSIBILITY OF INTERNATIONAL MARRIAGE BROKERS.

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

LBD03636-01-1

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.

S 472. FINANCIAL OBLIGATIONS OF INTERNATIONAL MARRIAGE BROKERS. 1. PRIOR TO ENGAGING IN THE BUSINESS OF OR ACTING IN THE CAPACITY OF AN INTERNATIONAL MARRIAGE BROKER, EVERY INTERNATIONAL MARRIAGE BROKER SHALL FILE WITH THE SECRETARY OF STATE A SURETY BOND TO THE PEOPLE OF NEW YORK NOT TO EXCEED A PENAL SUM OF FIFTY THOUSAND DOLLARS AND EXECUTED BY A SURETY COMPANY DULY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE. SUCH SURETY BOND SHALL BE CONDITIONED UPON THE INTERNATIONAL MARRIAGE BROKER'S COMPLIANCE WITH THE REQUIREMENTS SET FORTH WITHIN THIS ARTICLE AND ANY OTHER RULES AND REGULATIONS PRESCRIBED BY THE SECRETARY OF STATE PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND CONDITIONED UPON THE PAYMENT OF ANY RESULTING FINES AND PENALTIES OF SUCH NONCOMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE. SUCH SURETY BOND SHALL ALSO BE CONDITIONED UPON PAYMENT OF JUDGMENTS RENDERED AGAINST THE INTERNATIONAL MARRIAGE BROKER, OR PRINCIPAL OF THE BOND, FOR ANY ACTION BROUGHT BY A PERSON FOR FRAUD, MISSTATEMENT, MISREPRESENTATION, DECEIT, OR ANY OTHER UNLAWFUL ACT OR OMISSION OF THE INTERNATIONAL MARRIAGE BROKER OR THE AGENTS OR EMPLOYEES OF SUCH BROKER. SUCH SURETY BOND SHALL BE MAINTAINED FOR THE DURATION OF THE BUSINESS AND FOR THREE YEARS SUCCEEDING THE DISSOLUTION OF THE BUSINESS. PROOF OF SUCH BOND SHALL BE PROVIDED TO THE SECRETARY OF STATE ON A BIANNUAL BASIS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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