STATE OF NEW YORK

8146

IN SENATE

April 9, 2018

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the insurance law and the general business law, in relation to prohibiting the bail bond business; and to repeal certain provisions of such laws, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 520.10 of the criminal procedure law, paragraph (i) as amended by chapter 457 of the laws of 2005, is amended to read as follows:

1. The only authorized forms of bail are the following:

(a) Cash bail.

(b) [~~An insurance company bail bond.~~

~~(c)~~] A secured surety bond.

[~~(d)~~] (c) A secured appearance bond.

[~~(e)~~] (d) A partially secured surety bond.

[~~(f)~~] (e) A partially secured appearance bond.

[~~(g)~~] (f) An unsecured surety bond.

[~~(h)~~] (g) An unsecured appearance bond.

[~~(i)~~] (h) Credit card or similar device; provided, however, that notwithstanding any other provision of law, any person posting bail by credit card or similar device also may be required to pay a reasonable administrative fee. The amount of such administrative fee and the time and manner of its payment shall be in accordance with the system established pursuant to subdivision four of section 150.30 of this chapter or paragraph (j) of subdivision two of section two hundred twelve of the judiciary law, as appropriate.

§ 2. Subdivision 16 of section 500.10 of the criminal procedure law is REPEALED and subdivisions 17, 18, 19 and 20 are renumbered subdivisions 16, 17, 18 and 19.

§ 3. Paragraph (a) of subdivision 1 of section 520.30 of the criminal procedure law, as amended by chapter 384 of the laws of 1984, is amended to read as follows:

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

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(a) The background, character and reputation of any obligor[~~, and, in the case of an insurance company bail bond, the qualifications of the surety-obligor and its executing agent~~]; and

§ 4. The article heading of article 68 of the insurance law is amended to read as follows:

[~~BAIL BONDS~~] **CHARITABLE BAIL ORGANIZATIONS**

§ 5. Sections 6801, 6802, 6803 and 6804 of the insurance law are REPEALED and section 6805 is renumbered section 6801.

§ 6. The general business law is amended by adding a new section 391-u to read as follows:

§ 391-u. Prohibit the bail bond business. 1. For purposes of this section "bail bond business" shall mean any person, partnership, or corporation engaged for profit in the business of furnishing bail, or to otherwise for compensation or other consideration furnish bail or funds or property to serve as bail or make bonds or enter into undertakings as surety for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine or imprisonment before any court of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof. The business of bail bondsman shall be limited to the acts, transactions, and undertakings described in this subdivision.

2. It shall be unlawful for any person, partnership, or corporation to engage in the bail bond business as defined in subdivision one of this section.

3. Any person, partnership, or corporation who violates this section shall be guilty of a class A misdemeanor punishable by a fine not to exceed five hundred dollars, or by imprisonment of not more than one year, or by both such fine and imprisonment.

§ 7. The article heading of article 7 of the general business law, as amended by chapter 562 of the laws of 2000, is amended to read as follows:

PRIVATE INVESTIGATORS[~~, BAIL ENFORCEMENT AGENTS~~] AND WATCH, GUARD AND PATROL AGENCIES

§ 8. Section 70-a of the general business law, as added by chapter 115 of the laws of 2015, is amended to read as follows:

§ 70-a. [~~Bail enforcement agents and watch~~] **Watch**, guard or patrol agencies. 1. The department of state shall have the power to issue separate licenses to [~~bail enforcement agents and to~~] watch, guard or patrol agencies. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency [~~or bail enforcement agent~~] as defined in this article; however, a watch, guard or patrol agency [~~or bail enforcement agent~~] may not perform the services of a private investigator as defined in this article.

2. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of [~~bail enforcement agents or the business of~~] watch, guard or patrol agency, or advertise his, their or its business to be that of [~~bail enforcement agent or~~] watch, guard or patrol agency, notwithstanding the name or title used in describing such agency or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the department of state a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

3. Any person, firm, company, partnership or corporation who violates any provision of this section shall be guilty of a class B misdemeanor.

§ 9. Subdivisions 1-a and 4 of section 71 of the general business law are REPEALED.

§ 10. The opening paragraph of section 72 of the general business law, as amended by chapter 562 of the laws of 2000, is amended to read as follows:

Application for licenses. Any person, firm, partnership, limited liability company or corporation intending to conduct the business of private investigator[~~, business of bail enforcement agent~~] or the business of watch, guard or patrol agency, and any person, firm, partnership, limited liability company or corporation intending to conduct the business of furnishing or supplying information as to the personal character of any person or firm, or as to the character or kind of the business and occupation of any person, firm or corporation, society or association or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or while engaged in other lawful business activities also intending to engage in any one or more of the activities set forth in section seventy-one of this article except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations or as to personal habits and financial responsibility of applicants for [~~insurance indemnity bonds or~~] commercial credit or of claimants under insurance policies shall, for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, partnership, limited liability company or corporation for the conduct of such business, file in the office of the department of state a written application, on forms provided by the department containing such information and documentation, including fingerprints, as the secretary of state may require by rule and regulation.

§ 11. Subdivision 1 of section 73 of the general business law, as amended by chapter 562 of the laws of 2000, is amended to read as follows:

1. The secretary of state shall have the power to enforce the provisions of this article and article seven-A of this chapter and upon complaint of any person, or on his own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm, limited liability company, partnership or corporation applying for or holding a license as a private investigator[~~, bail enforcement agent~~] or watch, guard or patrol agency, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary of state, to supply such information, books, papers or records as may be required concerning his, their or its business, business practices or business methods, or proposed business practices or methods. Failure to comply with a lawful request of secretary shall be a ground for denying an application for a license, or for revoking, suspending, or failing to renew a license issued under this article.

§ 12. Paragraphs (a) and (b) of subdivision 1 of section 74 of the general business law, as amended by chapter 562 of the laws of 2000, paragraph (b) as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

(a) The application shall be accompanied by a non-refundable fee, payable to the department of state for the use of the state, for each certificate of license, as hereinbelow enumerated, issued to the appli-

cant, if the applicant be an individual, of four hundred dollars for a license as private investigator [~~or bail enforcement agent~~] or a fee of three hundred dollars for a license as watch, guard or patrol agency, or if the applicant be a firm, partnership, limited liability company or corporation, a fee of five hundred dollars for a license as private investigator [~~or bail enforcement agent~~] or a fee of four hundred dollars for a license as watch, guard or patrol agency.

(b) When the application shall have been examined and such further inquiry and investigation made as the secretary of state shall deem proper, and when the secretary of state shall be satisfied therefrom of the good character, competency and integrity of such applicant, or, if the applicant be a firm or partnership, the individual members thereof, or if the applicant be a limited liability company, the individual members thereof, or if the applicant be a corporation, the president, secretary, treasurer and all other officers and all directors thereof, and each stockholder owning ten per centum or more of the stock and a period to ten days from the date of the filing of the application shall have passed, the department of state shall issue and deliver to such applicant a certificate of license to conduct such business and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application upon the applicant's executing, delivering and filing in the office of such department a surety company bond in the sum of ten thousand dollars; provided however, that [~~an applicant for a license as a bail enforcement agent shall execute, deliver and file with the office of such department a surety company bond in the sum of five hundred thousand dollars, conditioned for the faithful and honest conduct of such business by such applicant, which surety bond must be written by a company recognized and approved by the superintendent of financial services of the state, and approved by the department of state with respect to its form, manner of execution and sufficiency provided, further, however,~~] before a license is issued to a non-resident the applicant must file with the secretary of state a written consent to the jurisdiction of the courts of New York (i) in any case or cases arising from any contract for the performance of private investigative services as private investigator[~~, bail enforcement agent~~] or watch, guard or patrol agency, made within the state or to be performed, wholly or in part, within the state or in any way connected with the conduct of business within the state, and (ii) in any case or cases arising from any tort occurring within the state or occurring in connection with the business of the licensee within the state. The license as private investigator[~~, bail enforcement agent~~] or watch, guard or patrol agency granted pursuant to this article shall last for a period of two years, but shall be revocable at all times by the department of state for cause shown. Such bond shall be taken in the name of the people of the state of New York, and any person injured by the violation of any of the provisions of this article or by the wilful, malicious and wrongful act of the principal or employee may bring an action against such principal, employee or both on said bond in his own name to recover damages suffered by reason of such wilful, malicious and wrongful act. In each and every suit, or prosecution arising out of this article, the agency of any employee as to the employment and as to acting in the course of his employment, shall be presumed. The license certificate shall be in a form to be prescribed by the secretary of state and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau, agency, sub-agency,

office or branch office for which the license is issued, the date on which it is issued, the date on which it will expire and the names and residences of the applicant or applicants filing the statement required by section seventy-two of this article upon which the license is issued and in the event of a change of any such address or residence the department of state shall be duly notified in writing of such change within twenty-four hours thereafter, and failure to give such notification shall be sufficient cause for revocation of such license. No such license as private investigator[~~, bail enforcement agent~~] or watch, guard or patrol agency shall be issued to a person under the age of twenty-five years.

§ 13. Section 74-a of the general business law is REPEALED.

§ 14. Section 80 of the general business law, as amended by chapter 562 of the laws of 2000, is amended to read as follows:

§ 80. License certificates, pocket cards or badges. Upon the issuing of a license as hereinbefore provided the department of state shall issue to each person, partner, member of a limited liability company or officer of a corporation making and filing a statement required by section seventy-two of this article a pocket card of such size and design as the department of state may prescribe, which card shall contain a photograph of the licensee, the name and business address of the licensee and the imprint or impress of the seal of the department of state which pocket card shall be evidence of due authorization pursuant to the terms of this article. All persons to whom such license certificates or pocket cards shall have been issued shall be responsible for the safe keeping of the same, and shall not lend, enable, let or allow any other person to have, hold, use or display such certificate or pocket card; and any person so parting with such a license certificate or pocket card or displaying the same without authority, or who shall display any license certificate or pocket card purporting to authorize the holder thereof to act as a private investigator[~~, bail enforcement agent or~~] watch, guard or patrol agency, unless the same shall have been duly issued pursuant to the provisions of this article, shall be guilty of a misdemeanor. Failure to comply with the provisions of this section shall be sufficient cause for revocation of such license, and all such certificates or pocket cards shall be returned to the department of state within seventy-two hours after the holder thereof has received notice in writing of the expiration or revocation of such license. It shall be unlawful for a holder of a license or anyone else to distribute, possess, use or display any license certificate, pocket card, badge, shield or any other indicia of a license status pursuant to this article except as set forth in this article. Any person who is a licensee hereunder or an officer or authorized employee of any other person, firm, limited liability company or corporation, whether or not licensed hereunder, while performing the services of a watchman, guard or private patrolman, may wear on his outer clothing a rectangular metal or woven insignia approved by the department of state, which insignia shall not be larger than three inches high nor four inches wide with an inscription thereon containing the word "watchman", "guard", "patrol" or "special service" and the name of such licensee or employer. It shall be unlawful for any employer, whether or not licensed hereunder, to wear or distribute to his, their or its employees any employment identification except as authorized in this article and approved by the secretary of state. Any person violating any provision of this section shall be guilty of a misdemeanor.

§ 15. Subdivision 1 of section 81 of the general business law, as amended by section 14 of part LL of chapter 56 of the laws of 2010, is amended to read as follows:

1. The holder of any license certificate issued pursuant to this article may employ to assist him in his work of private detective or investigator [~~or bail enforcement agent~~] as described in section seventy-one of this article and in the conduct of such business as many persons as he may deem necessary, and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed. No holder of any unexpired license certificate issued pursuant to this article shall knowingly employ in connection with his or its business in any capacity whatsoever, any person who has been convicted of a felony or any of the offenses specified in subdivision two of section seventy-four of this article, and who has not subsequent to such conviction received executive pardon therefor removing this disability, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law to remove the disability under this section because of such a conviction, or any person whose private detective or investigator's license [~~or bail enforcement agent's license~~] was revoked or application for such license was denied by the department of state or by the authorities of any other state or territory because of conviction of any of such offenses. Should the holder of an unexpired license certificate falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license. Any person falsely stating or representing that he is or has been a detective or employed by a detective agency [~~or that he is or has been a bail enforcement agent or employed by a bail enforcement agency~~] shall be guilty of a misdemeanor.

§ 16. The opening paragraph of section 83 of the general business law, as amended by chapter 127 of the laws of 2015, is amended to read as follows:

Nothing in this article shall apply to any detective or officer belonging to the police force of the state, or any county, city, town or village thereof, appointed or elected by due authority of law, or to any person in the employ of any police force or police department of the state, or of any county, city, town or village thereof while engaged in the performance of their official duties; nor to any person, firm, limited liability company, partnership, corporation, or any bureau or agency, whose business is exclusively the furnishing of information as to the business and financial standing, and credit responsibility of persons, firms, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit or of claimants under insurance policies, nor to any person licensed as a certified public accountant while engaged in the practice of public accountancy as defined in article one hundred forty-nine of the education law or any firm, limited liability company, partnership or corporation registered as a certified public accounting firm by the commissioner of education while performing services regulated under article one hundred forty-nine of the education law or Part 70 of the regulations of the commissioner of education; and whose business does not embrace other activities described in section seventy-one of this article; or whose business is licensed by the commissioner of labor under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workers' compensation law or whose business is representing employers or groups of employers insured under the workers'

compensation law in the state insurance fund; nor to any corporation duly authorized by the state to operate a central burglar or fire alarm protection business; nor to any person while engaged in the business of adjuster for an insurance company nor to any public adjuster licensed by the superintendent of financial services under the insurance law nor to any person regularly employed as special agent, detective or investigator exclusively by one employer in connection with the affairs of that employer only nor to any charitable or philanthropic society or association duly incorporated under the laws of the state and which is organized and maintained for the public good and not for private profit, nor shall anything in this article contained be construed to affect in any way attorneys or counselors at law in the regular practice of their profession, but such exemption shall not enure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law. No person, firm, limited liability company, partnership, corporation or any bureau or agency exempted hereunder from the application of this article shall perform any manner of private investigator[~~, bail enforcement agent~~] or watch, guard or patrol agency service as described in section seventy-one of this article, for any other person, firm, limited liability company, partnership, corporation, bureau or agency whether for fee, hire, reward, other compensation, remuneration, or consideration or as an accommodation without fee, reward or remuneration or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this article shall constitute a violation thereof.

§ 17. Subdivision 1 of section 84 of the general business law, as amended by chapter 84 of the laws of 2001, is amended to read as follows:

1. It is unlawful for the holder of a license, issued under this article, or for any employee of such licensee, knowingly to commit any of the following acts within or without the state of New York: to incite, encourage, or aid in the incitement or encouragement of any person or persons who have become a party to any strike, to do unlawful acts against the person or property of any one, or to incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person, firm, limited liability company or corporation with the intention of having them strike; to interfere or prevent lawful and peaceful picketing during strikes; to interfere with, restrain, or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing; to interfere or hinder the lawful or peaceful collective bargaining between employees and employers; to pay, offer, or give any money, gratuity, favor, consideration, or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right of self-organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing; to advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or without the state of New York, any help or labor, skilled or unskilled, or to furnish or offer to furnish armed guards, other than armed guards theretofore regularly employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike, or furnish armed guards upon the highways, for persons involved in labor disputes or to furnish or offer to furnish to employers or their agents, any

arms, munitions, tear gas implements, or any other weapons; or to send letters or literature to employers offering to eliminate labor unions or distribute or circulate any list of members of a labor organization, or to advise any person of the membership of an individual in a labor organization for the express purpose of preventing those so listed or named from obtaining or retaining employment. The violation of any of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than five hundred dollars, or one year's imprisonment or both. It is unlawful for the holder of a license to collect or offer or attempt to collect or directly or indirectly engage in the business of collecting of debts or claims of any kind, excepting that the taking possession, on behalf of a secured party having the right to do so under section 9--609 of the uniform commercial code, of property in the possession of a debtor who has defaulted in the performance of a security agreement secured by such property, shall not be considered a violation of this section and excepting further that the secretary of state may grant exemption from this prohibition in the collection of debts to licensees who are principally engaged in the business of credit investigation and credit reporting. It is unlawful for the holder of a license to furnish or perform any services described in subdivisions one and two of section seventy-one of this article on a contingent or percentage basis or to make or enter into any agreement for furnishing services of any kind or character, by the terms or conditions of which agreement the compensation to be paid for such services to the holder of a license is partially or wholly contingent or based upon a percentage of the amount of money or property recovered or dependent in any way upon the result achieved. It shall be unlawful for a holder of a license to use, display, cause to be printed or distributed, cards, letter-heads, circulars, brochures or any other advertising material or advertisement in which any name or indicia of the license status of the licensee is set forth in any manner other than the name under which the licensee is duly licensed. It is unlawful for a licensed private investigator [~~or bail enforcement agent~~] to own, have or possess or in any manner to wear, exhibit or display, a shield or badge of any material, kind, nature or description, in the performance of any of the activities as private investigator [~~or bail enforcement agent~~], as distinguished from watch, guard or patrol agency, under this article. It is unlawful for a licensed private investigator [~~or bail enforcement agent~~] to issue to any person employed by such licensee, a badge or shield of any material, kind, nature or description, and it is unlawful for any person employed by such licensee to possess, carry or display a badge or shield of any description provided that any licensed private investigator [~~or bail enforcement agent~~] who also engages in the business of watch, guard or patrol agency may possess, use or display or issue to employees in the conduct of such business, a rectangular metal or woven insignia to be worn on the outer clothing and approved by the department of state, which insignia shall not be larger than three inches high or four inches wide with an inscription thereon containing the word "watchman", "guard", "patrol" or "special service" and the name of the licensee. It shall be unlawful for any licensee to publish or cause to be published any advertisement, letter-head, circular, statement or phrase of any sort which suggests that the licensee is an official police or investigative agency or any other agency instrumentality of the state of New York or any of its political subdivisions. It shall be unlawful for any licensee to make any statement which would reasonably cause another person to believe that the licensee is a police officer or

official investigator of the state of New York or any of its political subdivisions. It shall be unlawful for a licensee to offer, by radio, television, newspaper advertisement or any other means of communication, to perform services at any location which is merely the location of a telephone answer service unless full disclosure of that fact is made in the advertisement.

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