

STATE OF NEW YORK

7475

2021-2022 Regular Sessions

IN SENATE

October 27, 2021

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

AN ACT to amend the insurance law, in relation to providing for licensing of an immigration bond business

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

1 Section 1. The insurance law is amended by adding a new article 68-A
2 to read as follows:

ARTICLE 68-A

IMMIGRATION BOND BUSINESS

Section 6810. Immigration bond business.

6 6811. Immigration bond business; licensing.

7 6812. Restrictions.

8 6813. Premium or compensation.

9 6814. Civil action by private party; damages; attorney fees.

10 6815. Severability clause.

11 6816. Regulations.

12 § 6810. Immigration bond business. (a)(1) Any person, firm or organ-
13 ization who charges a premium or a fee, or receives compensation in
14 connection with the depositing of money or property as bond, executes as
15 surety, or negotiates or solicits, any bond, or indemnifies or under-
16 writes bonds in relation to any proceeding, filing or action affecting
17 the non-immigrant, immigrant or citizenship status of a person which
18 arises under the immigration and nationality law, executive order or
19 presidential proclamation, or which arises under actions or regulations
20 of the United States department of homeland security shall be deemed to
21 be doing an immigration bond business as defined in this article and
22 doing an insurance business as defined in article eleven of this chap-
23 ter.

24 (2) Except for a corporation authorized to write fidelity and surety
25 insurance and to do an immigration bond business pursuant to the

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

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1 provisions of article eleven of this chapter and otherwise in compliance
2 with all other requirements of this chapter to do such business, no
3 person, firm or corporation shall engage in an immigration bond business
4 in this state.

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

9 § 6811. Immigration bond business; licensing. (a) No person, firm or
10 corporation or any officer or employee thereof shall act in this state
11 as an agent or solicitor of an immigration bond business in soliciting
12 or negotiating any fees, compensation, or premiums related to an immi-
13 gration bond or effectuating any such deposit or immigration bond by
14 such immigration bond business unless licensed by the superintendent as
15 an agent pursuant to the provisions of this section.

16 (b) Every immigration bond business in this state shall procure a
17 license pursuant to the provisions of this section for each of its
18 employees, officers and agents acting for it in soliciting or negotiat-
19 ing any fees, compensation, or premiums related to an immigration bond
20 or effectuating any such deposit or immigration bond.

21 (c) The superintendent may, in the superintendent's discretion, issue
22 to any person, firm or corporation a license to act as an agent of an
23 immigration bond business in soliciting, negotiating or effectuating any
24 such deposit or immigration bond by such immigration bond business.

25 (d) Any such license issued to an immigration bond business shall
26 authorize only the members named in such license as sublicensees, to act
27 individually as agents thereunder. Any sublicense issued to a corpo-
28 ration shall authorize only the officers and directors named in such
29 license as sublicensees, to act individually as agents thereunder.
30 Every sublicensee, acting as an insurance agent pursuant to a license
31 issued to a firm or corporation, shall be authorized to act only in the
32 name of such firm or corporation.

33 (e) Before the issuance of a license every applicant shall satisfy the
34 superintendent as to his or her trustworthiness and competence and
35 otherwise comply with the conditions set forth in this section. The
36 superintendent may refuse to issue any such license if in his or her
37 judgment such refusal will best promote the interests of the people of
38 this state.

39 (f) At the time of the application for every license a twenty-five
40 dollar fee shall be paid to the superintendent for each year or fraction
41 of a year in which a license shall be valid for each individual appli-
42 cant and for each proposed sublicensee.

43 (g) Every applicant for a license hereunder shall file with the super-
44 intendent written evidence by those who know his or her character and
45 reputation and by such other proof as the superintendent may require,
46 including his or her fingerprints, that he or she is a person of good
47 character and reputation and has never been convicted of any offense
48 involving moral turpitude or of any crime. If such applicant is a firm
49 or corporation such proof must be made with respect to every member,
50 shareholder, officer and director of such firm or corporation. Such
51 fingerprints shall be submitted to the division of criminal justice
52 services for a state criminal history record check, as defined in subdi-
53 vision one of section three thousand thirty-five of the education law
54 and may be submitted to the federal bureau of investigation for a
55 national criminal history record check.

1 (h) In order to determine the competence of each applicant for a
2 license or a sublicense, the superintendent shall require every appli-
3 cant to pass to the satisfaction of the superintendent a written exam-
4 ination to be prepared by the superintendent and appropriate to the
5 doing of an immigration bond business. If the applicant or any proposed
6 sublicensee intends to maintain an office or solicit, negotiate, effec-
7 tuate or deposit bail on behalf of another in any city containing a
8 population of more than one hundred seventy-five thousand, such written
9 examination may inquire into the applicant's knowledge of the pertinent
10 provisions of the criminal procedure law and the pertinent rules and
11 practices of the courts and district attorneys' offices within the area
12 of the applicant's proposed operations. Such examination shall be held
13 at such times and places as the superintendent shall determine.

14 (i) Every individual applying to take any written examination shall at
15 the time of applying pay to the superintendent, or at the discretion of
16 the superintendent, directly to any organization that is under contract
17 to provide examination services, an examination fee of an amount which
18 is the actual documented administrative cost of conducting the examina-
19 tion as certified by the superintendent from time to time. An examina-
20 tion fee represents an administrative expense and is not refundable.

21 (j) Every applicant for any such license shall file with the super-
22 intendent a qualifying bond, approved by the attorney general as to form
23 and by the superintendent as to sufficiency, in a penalty of five thou-
24 sand dollars, conditioned upon the faithful performance of the duties of
25 such licensee. No such qualifying bond shall be subject to termination
26 or cancellation by either party in less than sixty days after the giving
27 of written notice to the other party and to the superintendent. A termi-
28 nation or cancellation shall not affect the liability of the surety or
29 sureties on such bond incurred prior to the effective date of such
30 termination or cancellation. If during the term of such bond such licen-
31 see shall be guilty of fraudulent or dishonest conduct or other miscon-
32 duct or malfeasance in his or her dealings with any court or magistrate
33 or with any person or corporation in connection with any deposit or bail
34 bond, the attorney general may maintain an action on such qualifying
35 bond in the name of the people of this state and either recover the full
36 amount of the penalty or recover for the use and benefit of the person
37 or persons aggrieved, the amount of loss or injury sustained by such
38 person or persons by reason of such misconduct. No such recovery or
39 recoveries shall exceed in the aggregate five thousand dollars, exclu-
40 sive of interest and costs. An action shall not be brought under this
41 section more than six years after the occurrence of the act, method or
42 practice which is the subject of the action or more than one year after
43 the last payment in a transaction involving the method, act or practice
44 which is the subject of the action, whichever is later.

45 (k) The superintendent may, upon notice and after a hearing, revoke or
46 suspend, for such period as he or she may determine, any such license or
47 sublicense issued pursuant to the provisions of this section if, after
48 notice and hearing as specified in this chapter, he or she determines
49 that the licensee or any sublicensee or any member of a firm or corpo-
50 ration which is so licensed has:

51 (1) violated any provision of, or any obligation imposed by, this
52 chapter, or has violated any other law of the state;

53 (2) has made a material misstatement in the application for such
54 license;

55 (3) has been guilty of any fraudulent or dishonest practices or other
56 misconduct or malfeasance;

1 (4) has charged or received, as premium or compensation for the making
2 of any deposit or immigration bond, any sum in excess of that permitted
3 by law;

4 (5) has required, as a condition of his or her executing an immi-
5 gration bond, that the principal agree to engage the services of a spec-
6 ified attorney; or

7 (6) has demonstrated his or her incompetency or untrustworthiness to
8 act as a licensee.

9 (1) The superintendent, in lieu of revoking or suspending a license in
10 accordance with the provisions of this article, may, in any one proceed-
11 ing, by order, require the licensee to pay to the people of this state a
12 penalty in a sum not exceeding five hundred dollars for each offense,
13 and a penalty in a sum not exceeding twenty-five hundred dollars in the
14 aggregate for all offenses. Upon failure of such licensee to pay such
15 penalty within twenty days after the mailing of such order, postage
16 prepaid, registered, and addressed to the last known place of business
17 of such licensee, unless such order is stayed by a court of competent
18 jurisdiction, the superintendent may revoke the license of such licensee
19 or may suspend the same for such period as he or she may determine.

20 (m) Every license issued to an officer, employee, or agent of an immi-
21 gration bond business pursuant to this section shall be for a term
22 expiring on the thirty-first of December of even numbered years and may
23 be renewed for the ensuing two calendar years upon the filing of a
24 renewal application. The superintendent may refuse to issue any such
25 license if in the superintendent's judgment such refusal will best
26 promote the interests of the people of this state. Every such licensee
27 and sublicensee shall file an information statement on or before the
28 thirty-first of December of each even numbered year, the form and
29 subject matter of which may be prescribed by the superintendent.

30 (n) Any domestic, foreign or alien surety company which was licensed
31 to do an immigration bond business in this state before January first,
32 nineteen hundred forty shall so long as its license or any renewal
33 remains in force, be deemed licensed as an insurer to do such business
34 within the meaning of subsection (b) of section six thousand eight
35 hundred ten of this article and article eleven of this chapter.

36 (o) This section shall not apply to any insurer authorized in this
37 state to execute and issue policies of motor vehicle and aircraft insur-
38 ance as specified in paragraphs thirteen, fourteen and nineteen of
39 subsection (a) of section one thousand one hundred thirteen of this
40 chapter or to any agent of such insurer or to any broker who, as an
41 incident to the execution and issuance of any such policy or to the
42 solicitation, negotiation or procurement thereof undertakes to pay, in
43 addition to the applicable limits of liability, the cost of immigration
44 bonds required of the insured because of accident or asserted traffic
45 law violations arising out of the use of a vehicle insured under the
46 terms of the policy, provided the cost of each such immigration bond
47 does not exceed one hundred dollars, or who otherwise arranges for the
48 execution of a immigration bond or deposit in lieu of cash bail on
49 behalf of the insured in the event of the insured's arrest or detention
50 by reason of an asserted violation of any law relating to the use of a
51 motor vehicle.

52 (p) The superintendent may issue a replacement for a currently in
53 force license which has been lost or destroyed. Before such replacement
54 license shall be issued, there shall be on file in the office of the
55 superintendent a written application for such replacement license,

1 affirming under penalty of perjury that the original license has been
2 lost or destroyed, together with a fee of fifteen dollars.

3 § 6812. Restrictions. (a) No immigration bond business as defined in
4 subsection (a) of section six thousand eight hundred ten of this article
5 shall require the use of an electronic monitoring device as a condition
6 for the provision of such a bond or in exchange for services. For the
7 purposes of this section, an "electronic monitoring device" includes any
8 device that tracks or monitors location, any device that tracks or moni-
9 tors biometric data, or any device that records or transmits video or
10 audio surveillance data.

11 (b) No immigration bond business as defined in subsection (a) of
12 section six thousand eight hundred ten of this article shall provide a
13 referral or contact information for a lawyer or legal services provider
14 that is owned at least partly by the immigration bond business or an
15 entity affiliated with the immigration bond business without:

16 (1) disclosing in writing, in a language understood by the consumer,
17 the source of payment to the lawyer or legal services provider for the
18 services rendered; and

19 (2) including the written statement: "The payment of premiums or fees
20 to the immigration bond provider is not for and does not guarantee that
21 you will receive legal representation. Using this lawyer or legal
22 services provider is not a requirement of bond. If you choose to hire
23 this lawyer or legal services provider, you have the right to fire them
24 at any time and seek your own counsel."

25 § 6813. Premium or compensation. (a) For the purposes of this article,
26 premium or compensation shall include all fees and payments associated
27 with the payment, underwriting or indemnification of a bond. Such fees
28 and payments shall include, but are not limited to maintenance fees,
29 program fees, and interest rate payments.

30 (b) The premium or compensation for giving an immigration bond or
31 depositing money or property as bail in an action affecting the non-im-
32 migrant, immigrant or citizenship status of a person shall not exceed
33 ten per centum of the amount of such bond or deposit in actions where
34 such bonds or deposits do not exceed the sum of three thousand dollars.
35 Where such bonds or deposits exceed the sum of three thousand dollars,
36 the premium shall not exceed ten per centum of the first three thousand
37 dollars and eight per centum of the excess amount over three thousand
38 dollars up to ten thousand dollars and six per centum of the excess
39 amount over ten thousand dollars.

40 (c) No person or corporation shall:

41 (1) charge or receive, directly or indirectly, any greater compen-
42 sation for making a deposit for an immigration bond, or act in such
43 business as aforesaid without obtaining a license, or

44 (2) accept any fee or compensation for obtaining a license or for
45 obtaining an immigration bond. Such person or corporation shall be guil-
46 ty of a misdemeanor and in addition shall in any action brought to
47 recover any such overcharge be liable for treble damages.

48 § 6814. Civil action by private party; damages; attorney fees. Any
49 person who has been injured by reason of any violation of this article
50 may bring an action in his or her own name to enjoin such unlawful act
51 or practice, an action to recover treble his or her actual damages, or
52 both such actions. The court shall award reasonable attorney's fees and
53 costs to a prevailing plaintiff.

54 § 6815. Severability clause. If any clause, sentence, paragraph,
55 subsection, section or part of this article shall be adjudged by any
56 court of competent jurisdiction to be invalid, such judgment shall not

1 affect, impair, or invalidate the remainder thereof, but shall be
2 confined in its operation to the clause, sentence, paragraph,
3 subsection, section or part thereof directly involved in the controversy
4 in which such judgment shall have been rendered. It is hereby declared
5 to be the intent of the legislature that this article would have been
6 enacted even if such invalid provisions had not been included herein.

7 § 6816. Regulations. The superintendent shall promulgate regulations
8 implementing the provisions of this article, or any other regulations
9 allowed by law that advances the safety, health and interests of consum-
10 ers.

11 § 2. This act shall take effect on the sixtieth day after it shall
12 have become a law. Effective immediately, the addition, amendment
13 and/or repeal of any rule or regulation necessary for the implementation
14 of this act on its effective date are authorized to be made and
15 completed on or before such effective date.