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:

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

ARTICLE 68-A

IMMIGRATION BOND BUSINESS

Section 6810. Immigration bond business.
6811. Immigration bond business; licensing.
6812. Restrictions.
6813. Premium or compensation.
6814. Civil action by private party; damages; attorney fees.
6815. Severability clause.
6816. Regulations.

§ 6810. Immigration bond business. (a)(1) Any person, firm or organization who charges a premium or a fee, or receives compensation in connection with the depositing of money or property as bond, executes as surety, or negotiates or solicits, any bond, or indemnifies or underwrites bonds in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person which arises under the immigration and nationality law, executive order or presidential proclamation, or which arises under actions or regulations of the United States department of homeland security shall be deemed to be doing an immigration bond business as defined in this article 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 an immigration bond business pursuant to the

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

LBD09647-04-1

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

(b) No person, firm or corporation shall in this state do an insurance business or an immigration 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.

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

(b) Every immigration bond 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 or negotiating any fees, compensation, or premiums related to an immigration bond or effectuating any such deposit or immigration bond.

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

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

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

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

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

(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 an immigration 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.

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

(j) Every applicant for any such license shall file with the superintendent a qualifying bond, approved by the attorney general as to form and by the superintendent as to sufficiency, in a penalty of five thousand dollars, conditioned upon the faithful performance of the duties of such licensee. No such qualifying bond shall be subject to termination or cancellation by either party in less than sixty days after the giving of written notice to the other party and to the superintendent. A termination or cancellation shall not affect the liability of the surety or sureties on such bond incurred prior to the effective date of such termination or cancellation. If during the term of such bond such licensee shall be guilty of fraudulent or dishonest conduct or other misconduct or malfeasance in his or her dealings with any court or magistrate or with any person or corporation in connection with any deposit or bail bond, the attorney general may maintain an action on such qualifying bond in the name of the people of this state and either recover the full amount of the penalty or recover for the use and benefit of the person or persons aggrieved, the amount of loss or injury sustained by such person or persons by reason of such misconduct. No such recovery or recoveries shall exceed in the aggregate five thousand dollars, exclusive of interest and costs. An action shall not be brought under this section more than six years after the occurrence of the act, method or practice which is the subject of the action or more than one year after the last payment in a transaction involving the method, act or practice which is the subject of the action, whichever is later.

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

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

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

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

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

(5) has required, as a condition of his or her executing an immigration bond, that the principal agree to engage the services of a specified attorney; or

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

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

(m) Every license issued to an officer, employee, or agent of an immigration bond business pursuant to this section shall be for a term expiring on the thirty-first 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 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 of December of each even numbered year, the form and subject matter of which may be prescribed by the superintendent.

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

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

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

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

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

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

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

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

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

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

(c) No person or corporation shall:

(1) charge or receive, directly or indirectly, any greater compensation for making a deposit for an immigration bond, or act in such business as aforesaid without obtaining a license, or

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

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

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

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

§ 6816. Regulations. The superintendent shall promulgate regulations implementing the provisions of this article, or any other regulations allowed by law that advances the safety, health and interests of consumers.

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