

# STATE OF NEW YORK

7475--B

2021-2022 Regular Sessions

## IN SENATE

October 27, 2021

Introduced by Sens. BAILEY, BIAGGI, CLEARE, MYRIE, PARKER, RAMOS, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to an immigration bail 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 section 1123  
2 to read as follows:

3 § 1123. Immigration bail business. (a)(1) Any person, firm, corpo-  
4 ration, or other entity who shall for another deposit money or property  
5 as bail or execute as surety any bond in any immigration action or  
6 proceeding who within a period of one month prior thereto shall have  
7 made such a deposit or given such bail in more than two cases not aris-  
8 ing out of the same transaction shall be deemed to be doing an immi-  
9 gration bail business.

10 (2) Except for a corporation authorized to write fidelity and surety  
11 insurance and to do an immigration bail business pursuant to the  
12 provisions of this article and otherwise in compliance with all other  
13 requirements of this chapter to do such business, no person, firm,  
14 corporation, or other entity shall engage in an immigration bail busi-  
15 ness in this state.

16 (b) (1) No person, firm, corporation, or other entity shall in this  
17 state do an insurance business or an immigration bail business as  
18 defined in subsection (a) of this section unless authorized by a license  
19 issued and in force as provided under this article.

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

LBD09647-10-2

1 (2) The superintendent may authorize a property/casualty insurance  
2 company that is authorized to write fidelity and surety insurance to do  
3 an immigration bail business in accordance with the provisions of this  
4 article, but no individual or entity shall be licensed to do such busi-  
5 ness.

6 (c) Any person, firm, corporation, or other entity that violates this  
7 section shall be subject to the penalty set forth in subsection (a) of  
8 section one thousand one hundred two of this article.

9 (d) Any agreement entered into by an entity subject to this section  
10 that is not authorized to do an immigration bail business in accordance  
11 with the provisions of this article shall be void and unenforceable.

12 § 2. The insurance law is amended by adding a new section 2140 to  
13 read as follows:

14 § 2140. Restrictions on insurance producers procuring immigration  
15 bonds. (a) No insurance producer shall require the use of an electronic  
16 monitoring device as a condition of immigration bail. For the purposes  
17 of this section, an "electronic monitoring device" includes any device  
18 that tracks or monitors location, any device that tracks or monitors  
19 biometric data, or any device that records or transmits video or audio  
20 surveillance data.

21 (b) No insurance producer shall make a referral to or provide contact  
22 information for a legal services provider without:

23 (1) disclosing in writing, in a language understood by the consumer,  
24 whether the insurance producer or an entity that is an affiliate of the  
25 insurance producer: (A) has a financial or ownership interest in the  
26 legal services provider; (B) is receiving any compensation, either  
27 directly or indirectly, for making a referral to or providing contact  
28 information for the legal services provider; or (C) is compensating,  
29 either directly or indirectly, the legal services provider for the legal  
30 services rendered; and

31 (2) stating that: "The payment of premiums to the insurance producer  
32 is not for and does not guarantee that you will receive legal represen-  
33 tation. Using this legal services provider is not a requirement of  
34 bail. If you choose to hire this legal services provider, you have the  
35 right to fire the provider at any time and retain your own counsel."

36 (c) Any agreement, or portion thereof, entered into requiring the  
37 waiving of the requirements of this section or otherwise in violation of  
38 this section shall be void and unenforceable.

39 § 3. The insurance law is amended by adding a new section 2312 to read  
40 as follows:

41 § 2312. Immigration bond premium. (a) The premium for giving an immi-  
42 gration bond or depositing money or property as immigration bail in any  
43 court having immigration jurisdiction or in any immigration action or  
44 proceeding shall not exceed ten per centum of the amount of such bond or  
45 deposit in actions where such bonds or deposits do not exceed the sum of  
46 three thousand dollars. Where such bonds or deposits exceed the sum of  
47 three thousand dollars, the premium shall not exceed ten per centum of  
48 the first three thousand dollars and eight per centum of the excess  
49 amount over three thousand dollars up to ten thousand dollars and six  
50 per centum of the excess amount over ten thousand dollars.

51 (b) No person, firm, corporation, or other entity, including an insur-  
52 ance producer, shall:

53 (1) charge, collect, or receive, directly or indirectly, any fee or  
54 compensation in connection with an immigration bail deposit or immi-  
55 gration bond, other than the premium based on rates subject to the maxi-  
56 mum specified in subsection (a) of this section and filed with the

1 superintendent by the insurer pursuant to this article, notwithstanding  
2 subsection (c) of section two thousand one hundred nineteen of this  
3 chapter; or

4 (2) accept any fee or compensation for obtaining a license or for  
5 obtaining an insurance producer or immigration bond or for an immi-  
6 gration bail deposit.

7 (c) Any person, firm, corporation, or other entity that violates this  
8 section shall be guilty of a misdemeanor. An indemnitor may maintain a  
9 cause of action in a court of competent jurisdiction against any person,  
10 firm, corporation, or other entity to recover any fee or compensation in  
11 excess of the amount authorized pursuant to this section. The person,  
12 firm, corporation, or other entity shall, in any action brought by an  
13 indemnitor to recover any such overcharge, be liable for treble damages.

14 (d) Any agreement, or portion thereof, entered into requiring the  
15 waiving of the requirements of this section or otherwise in violation of  
16 this section shall be void and unenforceable.

17 § 4. Severability clause. If any clause, sentence, paragraph,  
18 subsection, section or part of this act shall be adjudged by any court  
19 of competent jurisdiction to be invalid, such judgment shall not affect,  
20 impair, or invalidate the remainder thereof, but shall be confined in  
21 its operation to the clause, sentence, paragraph, subsection, section or  
22 part thereof directly involved in the controversy in which such judgment  
23 shall have been rendered. It is hereby declared to be the intent of the  
24 legislature that this act would have been enacted even if such invalid  
25 provisions had not been included herein.

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