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:

Section 1. The insurance law is amended by adding a new section 1123 to read as follows:

§ 1123. Immigration bail business. (a)(1) Any person, firm, corporation, or other entity who shall for another deposit money or property as bail or execute as surety any bond in any immigration action or proceeding who within a period of one month prior thereto shall have made such a deposit or given such bail in more than two cases not arising out of the same transaction shall be deemed to be doing an immigration bail business.

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

(b) (1) No person, firm, corporation, or other entity shall in this state do an insurance business or an immigration bail business as defined in subsection (a) of this section unless authorized by a license 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.

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

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

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

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

§ 2140. Restrictions on insurance producers procuring immigration bonds. (a) No insurance producer shall require the use of an electronic monitoring device as a condition of immigration bail. 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 insurance producer shall make a referral to or provide contact information for a legal services provider without:

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

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

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

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

§ 2312. Immigration bond premium. (a) The premium for giving an immigration bond or depositing money or property as immigration bail in any court having immigration jurisdiction or in any immigration action or proceeding 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.

(b) No person, firm, corporation, or other entity, including an insurance producer, shall:

(1) charge, collect, or receive, directly or indirectly, any fee or compensation in connection with an immigration bail deposit or immigration bond, other than the premium based on rates subject to the maximum specified in subsection (a) of this section and filed with the

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

(2) accept any fee or compensation for obtaining a license or for obtaining an insurance producer or immigration bond or for an immigration bail deposit.

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

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

§ 4. Severability clause. If any clause, sentence, paragraph, subsection, section or part of this act 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 act would have been enacted even if such invalid provisions had not been included herein.

§ 5. 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.