

AN ACT concerning notaries public.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Notary Public Act is amended by changing Sections 1-104, 2-102, 3-103, and 3-104 as follows:

(5 ILCS 312/1-104) (from Ch. 102, par. 201-104)

Sec. 1-104. Notary Public and Notarization Defined.

(a) The terms "notary public" and "notary" are used interchangeably to mean any individual appointed and commissioned to perform notarial acts.

(b) "Notarization" means the performance of a notarial act.

(c) "Accredited immigration representative" means a not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of those organizations accredited under 8 C.F.R. 292.2(d).

(Source: P.A. 84-322.)

(5 ILCS 312/2-102) (from Ch. 102, par. 202-102)

Sec. 2-102. Application. Every applicant for appointment and commission as a notary shall complete an application form furnished by the Secretary of State to be filed with the Secretary of State, stating:

(a) the applicant's official name, which contains his or her last name and at least the initial of the first name;

(b) the county in which the applicant resides or, if the applicant is a resident of a state bordering Illinois, the county in Illinois in which that person's principal place of work or principal place of business is located;

(c) the applicant's residence address and business address, if any, or any address at which an applicant will use a notary public commission to receive fees;

(d) that the applicant has resided in the State of Illinois

for 30 days preceding the application or that the applicant who is a resident of a state bordering Illinois has worked or maintained a business in Illinois for 30 days preceding the application;

(e) that the applicant is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(f) that the applicant is at least 18 years of age;

(g) that the applicant is able to read and write the English language;

(h) that the applicant has never been the holder of a notary public appointment that was revoked or suspended during the past 10 years ~~the applicant's commission as notary (if any) has not been revoked;~~

(i) that the applicant has not been convicted of a felony;
and

(j) any other information the Secretary of State deems necessary.

(Source: P.A. 91-818, eff. 6-13-00.)

(5 ILCS 312/3-103) (from Ch. 102, par. 203-103)

Sec. 3-103. Notice.

(a) Every notary public who is not an attorney or an accredited immigration representative who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following: ~~post or otherwise include with such advertisement~~ a notice in English and the language in which the written communication ~~advertisement~~ appears. This notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE". If such advertisement is by radio or television, the

statement may be modified but must include substantially the same message.

A notary public shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the notary public, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word "notario" is prohibited under this provision. ~~Literal translation of the phrase "Notary Public" into a language other than English is prohibited. For the purposes of this subsection, "literal translation" of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.~~

Failure to follow the procedures in this Section shall result in a fine of \$1,000 for each written violation. The second violation shall result in suspension of notary authorization. The third violation shall result in permanent revocation of the commission of notary public. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(b) All notaries public required to comply with the provisions of subsection (a) shall prominently post at their place of business as recorded with the Secretary of State pursuant to Section 2-102 of this Act a schedule of fees established by law which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which notary services were solicited and shall contain the disavowal of legal representation required above in subsection (a), unless such notice of disavowal is already prominently posted.

(c) No notary public, agency or any other person who is not an attorney shall represent, hold themselves out or advertise that they are experts on immigration matters or provide any

other assistance that requires legal analysis, legal judgment, or interpretation of the law unless they are a designated entity as defined pursuant to Section 245a.1 of Part 245a of the Code of Federal Regulations (8 CFR 245a.1) or an entity accredited by the Board of Immigration Appeals.

(d) Any person who aids, abets or otherwise induces another person to give false information concerning immigration status shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

Any notary public who violates the provisions of this Section shall be guilty of official misconduct and subject to fine or imprisonment.

Nothing in this Section shall preclude any consumer of notary public services from pursuing other civil remedies available under the law.

(e) No notary public who is not an attorney or an accredited representative shall accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(f) Violation of subsection (e) is a business offense punishable by a fine of 3 times the amount received for services, or \$1,001 minimum, and restitution of the amount paid to the consumer. Nothing in this Section shall be construed to preempt nor preclude additional appropriate civil remedies or criminal charges available under law.

(g) If a notary public of this State is convicted of 2 or more business offenses involving a violation of this Act within a 12-month period while commissioned, or of 3 or more business offenses involving a violation of this Act within a 5-year period regardless of being commissioned, the Secretary shall automatically revoke the notary public commission of that person on the date that the person's most recent business offense conviction is entered as a final judgment.

(Source: P.A. 85-593.)

(5 ILCS 312/3-104) (from Ch. 102, par. 203-104)

Sec. 3-104. Maximum Fee.

(a) Except as provided in subsection (b) of this Section, the maximum fee in this State is \$1.00 for any notarial act performed.

(b) Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration legalization forms ~~or applications related to the Immigration Reform and Control Act of 1986~~ shall be limited to the following as follows:

(1) \$10 per form completion ~~\$75 per person;~~

(2) \$10 per page for the translation of a non-English language into English where such translation is required for immigration forms ~~\$75 per person up to 4 persons per immediate family, with no additional charge for a fifth or subsequent person where all persons are legally related;~~

(3) \$1 for notarizing ~~\$10 per page for the translation of a non-English language into English where such translation is required for legalization forms;~~

(4) \$3 to execute any procedures necessary to obtain a document required to complete immigration forms ~~\$1 for notarizing;~~ and

(5) A maximum of \$75 for one complete application ~~\$3 to execute any procedures necessary to obtain a document required to complete legalization forms.~~

Fees authorized under this subsection shall not include application fees required to be submitted with immigration applications ~~a legalization application in conformity with the Immigration and Control Act of 1986.~~

Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

(c) Upon his own information or upon complaint of any

person, the Attorney General or any State's Attorney, or their designee, may maintain an action for injunctive relief in the court against any notary public or any other person who violates the provisions of subsection (b) of this Section. These remedies are in addition to, and not in substitution for, other available remedies.

If the Attorney General or any State's Attorney fails to bring an action as provided pursuant to this subsection within 90 days of receipt of a complaint, any person may file a civil action to enforce the provisions of this subsection and maintain an action for injunctive relief.

(d) All notaries public must provide receipts and keep records for fees accepted for services provided. Failure to provide receipts and keep records that can be presented as evidence of no wrongdoing shall be construed as a presumptive admission of allegations raised in complaints against the notary for violations related to accepting prohibited fees.

(Source: P.A. 85-593.)

Section 10. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2AA as follows:

(815 ILCS 505/2AA)

Sec. 2AA. Immigration services.

(a) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant or citizenship status of any person that arises under immigration and naturalization law, executive order or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Citizenship and Immigration Services ~~Immigration and Naturalization Service~~, the United States Department of Labor, or the United States Department of State.

"Immigration assistance service" means any ~~advice,~~ ~~guidance,~~ information, or action provided or offered to customers or prospective customers related to immigration

matters, excluding legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law ~~relating to any immigration matter.~~

"Compensation" means money, property, services, promise of payment, or anything else of value.

"Employed by" means that a person is on the payroll of the employer and the employer deducts from the employee's paycheck social security and withholding taxes, or receives compensation from the employer on a commission basis or as an independent contractor.

"Reasonable costs" means actual costs or, if actual costs cannot be calculated, reasonably estimated costs of such things as photocopying, telephone calls, document requests, and filing fees for immigration forms, and other nominal costs incidental to assistance in an immigration matter.

(a-1) The General Assembly finds and declares that private individuals who assist persons with immigration matters have a significant impact on the ability of their clients to reside and work within the United States and to establish and maintain stable families and business relationships. The General Assembly further finds that that assistance and its impact also have a significant effect on the cultural, social, and economic life of the State of Illinois and thereby substantially affect the public interest. It is the intent of the General Assembly to establish rules of practice and conduct for those individuals to promote honesty and fair dealing with residents and to preserve public confidence.

(a-5) The following persons are exempt from this Section, provided they prove the exemption by a preponderance of the evidence:

- (1) An attorney licensed to practice law in any state or territory of the United States, or of any foreign country when authorized by the Illinois Supreme Court, to the extent the attorney renders immigration assistance service in the course of his or her practice as an

attorney.

(2) A legal intern, as described by the rules of the Illinois Supreme Court, employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the intern's employment.

(3) A not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of those organizations accredited under 8 C.F.R. 292.2(d).

(4) Any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.

Nothing in this Section shall regulate any business to the extent that such regulation is prohibited or preempted by State or federal law.

All other persons providing or offering to provide immigration assistance service shall be subject to this Section.

(b) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) Completing a government agency form, requested by the customer and appropriate to the customer's needs, only if the completion of that form does not involve a legal judgment for that particular matter.

(2) Transcribing responses to a government agency form which is related to an immigration matter, but not advising a customer as to his or her answers on those forms.

(3) Translating information on forms to a customer and translating the customer's answers to questions posed on those forms.

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms.

(5) Translating documents from a foreign language into English.

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public of the State of Illinois.

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter.

(8) Preparing or arranging for the preparation of photographs and fingerprints.

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results.

(10) Conducting English language and civics courses.

(11) Other services that the Attorney General determines by rule may be appropriately performed by such persons in light of the purposes of this Section.

Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the maximum fees set forth in subsections (a) and (b) of Section 3-104 of the Notary Public Act (5 ILCS 312/3-104) ~~The Attorney General may promulgate rules establishing maximum fees that may be charged for the services described in this subsection. The maximum fees must be reasonable in light of the costs of providing those services and the degree of professional skill required to provide the services.~~

No person subject to this Act shall charge fees directly or indirectly for referring an individual to an attorney or for any immigration matter not authorized by this Article, provided that a person may charge a fee for notarizing documents as permitted by the Illinois Notary Public Act.

(c) Any person performing such services shall register with the Illinois Attorney General and submit verification of malpractice insurance or of a surety bond.

(d) Except as provided otherwise in this subsection, before providing any assistance in an immigration matter a person shall provide the customer with a written contract that includes the following:

(1) An explanation of the services to be performed.

(2) Identification of all compensation and costs to be charged to the customer for the services to be performed.

(3) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs.

This subsection does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse the organization's or clinic's reasonable costs relating to providing immigration services to that client.

(e) Any person who provides or offers immigration assistance service and is not exempted from this Section, shall post signs at his or her place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least 11 inches by 17 inches, and shall contain the following:

(1) The statement "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(2) The statement "I AM NOT ACCREDITED TO REPRESENT YOU BEFORE THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AND THE IMMIGRATION BOARD OF APPEALS."

(3) The fee schedule.

(4) The statement that "You may cancel any contract

within 3 working days and get your money back for services not performed."

(5) Additional information the Attorney General may require by rule.

Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. ~~shall post or otherwise include with such advertisement a notice in English and the language in which the advertisement appears.~~ This notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

Any person who provides or offers immigration assistance service and is not exempted from this Section shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word "notario" is prohibited under this provision. ~~Literal translation of the word "licensed" into a language other than English is prohibited. For the purposes of this Section, "literal translation" of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.~~

If not subject to penalties under subsection (a) of Section 3-103 of the Notary Public Act (5 ILCS 312/3-103), violations of this subsection shall result in a fine of \$1,000. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(f) The written contract shall be in both English and in the language of the customer.

(g) A copy of the contract shall be provided to the customer upon the customer's execution of the contract.

(h) A customer has the right to rescind a contract within 72 hours after his or her signing of the contract.

(i) Any documents identified in paragraph (3) of subsection (c) shall be returned upon demand of the customer.

(j) No person engaged in providing immigration services who is not exempted under this Section shall do any of the following:

(1) Make any statement that the person can or will obtain special favors from or has special influence with the United States Immigration and Naturalization Service or any other government agency.

(2) Retain any compensation for service not performed.

(2.5) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(3) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer.

(4) Represent or advertise, in connection with the provision assistance in immigration matters, other titles of credentials, including but not limited to "notary public" or "immigration consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public

appointed by the Illinois Secretary of State may use the term "notary public" if the use is accompanied by the statement that the person is not an attorney; the term "notary public" may not be translated to another language; for example "notario" is prohibited.

(5) Provide ~~Give any~~ legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law concerning an immigration matter.

(6) Make any misrepresentation of false statement, directly or indirectly, to influence, persuade, or induce patronage.

(k) (Blank)

(l) (Blank)

(m) Any person who violates any provision of this Section, or the rules and regulations issued under this Section, shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

Upon his own information or upon the complaint of any person, the Attorney General or any State's Attorney, or a municipality with a population of more than 1,000,000, may maintain an action for injunctive relief and also seek a civil penalty not exceeding \$50,000 in the circuit court against any person who violates any provision of this Section. These remedies are in addition to, and not in substitution for, other available remedies.

If the Attorney General or any State's Attorney or a municipality with a population of more than 1,000,000 fails to bring an action as provided under this Section any person may file a civil action to enforce the provisions of this Article and maintain an action for injunctive relief, for compensatory damages to recover prohibited fees, or for such additional relief as may be appropriate to deter, prevent, or compensate for the violation. In order to deter violations of this

Section, courts shall not require a showing of the traditional elements for equitable relief. A prevailing plaintiff may be awarded 3 times the prohibited fees or a minimum of \$1,000 in punitive damages, attorney's fees, and costs of bringing an action under this Section. It is the express intention of the General Assembly that remedies for violation of this Section be cumulative.

(n) No unit of local government, including any home rule unit, shall have the authority to regulate immigration assistance services unless such regulations are at least as stringent as those contained in this amendatory Act of 1992. It is declared to be the law of this State, pursuant to paragraph (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that this amendatory Act of 1992 is a limitation on the authority of a home rule unit to exercise powers concurrently with the State. The limitations of this Section do not apply to a home rule unit that has, prior to the effective date of this amendatory Act, adopted an ordinance regulating immigration assistance services.

(o) This Section is severable under Section 1.31 of the Statute on Statutes.

(p) The Attorney General shall issue rules not inconsistent with this Section for the implementation, administration, and enforcement of this Section by January 1, 1995. The rules may provide for the following:

(1) The content, print size, and print style of the signs required under subsection (e). Print sizes and styles may vary from language to language.

(2) Standard forms for use in the administration of this Section.

(3) Any additional requirements deemed necessary.

(Source: P.A. 87-1211; 88-45; 88-644, eff. 9-9-94.)

Section 99. Effective date. This Act takes effect upon becoming law.