



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2548

Introduced 2/3/2004, by Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

| | |
|------------------|----------------------------|
| 5 ILCS 312/1-104 | from Ch. 102, par. 201-104 |
| 5 ILCS 312/2-102 | from Ch. 102, par. 202-102 |
| 5 ILCS 312/3-103 | from Ch. 102, par. 203-103 |
| 5 ILCS 312/3-104 | from Ch. 102, par. 203-104 |
| 815 ILCS 505/2AA | |

Amends the Illinois Notary Public Act and the Consumer Fraud and Deceptive Business Practice Act. Prohibits a person whose prior notary commission was suspended, canceled, or revoked from receiving another commission (now, a 10-year prohibition). Exempts notaries who are accredited immigration representatives (now, only attorneys) from the requirement that non-English advertisements of service include a notice that the notary is not an attorney. Applies the notice requirement to other identifying articles, such as letterhead and business cards. Prohibits the literal translation of various English terms that may imply the notary is an attorney. Prohibits a notary from accepting fees for immigration advice or assistance. Makes violations subject to fines, business offense penalties, and commission revocation. Makes other changes. Under the Consumer Fraud and Deceptive Business Practices Act, imposes similar restrictions, requirements, and penalties on persons providing immigration services. Permits recovery of prohibited fees through compensatory damages and permits punitive damages of 3 times the amount of the fees. Makes other changes. Effective immediately.

LRB093 19533 JAM 45273 b

1 AN ACT concerning notaries public.

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

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

6 (5 ILCS 312/1-104) (from Ch. 102, par. 201-104)

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

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

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

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

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

17 (5 ILCS 312/2-102) (from Ch. 102, par. 202-102)

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

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

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

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

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

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

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

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

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

11 (h) that the applicant has never been the holder of a
12 notary public appointment that was revoked, suspended, or
13 canceled in this or any other state during the past 10 years
14 the applicant's commission as notary (if any) has not been
15 revoked;

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

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

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

21 (5 ILCS 312/3-103) (from Ch. 102, par. 203-103)

22 Sec. 3-103. Notice.

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

1 ADVICE". If such advertisement is by radio or television, the
2 statement may be modified but must include substantially the
3 same message.

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

18 Failure to follow the procedures in this Section shall
19 result in a fine of \$1,000 for each written violation. The
20 second violation shall result in suspension of notary
21 authorization. The third violation shall result in permanent
22 revocation of the commission of notary public. Violations shall
23 also be subject to civil penalties.

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

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

1 designated entity as defined pursuant to Section 245a.1 of Part
2 245a of the Code of Federal Regulations (8 CFR 245a.1) or an
3 entity accredited by the Board of Immigration Appeals.

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

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

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

16 (e) No notary public shall accept payment in exchange for
17 immigration advice or assistance.

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

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

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

33 (5 ILCS 312/3-104) (from Ch. 102, par. 203-104)

34 Sec. 3-104. Maximum Fee.

35 (a) Except as provided in subsection (b) of this Section,

1 the maximum fee in this State is \$1.00 for any notarial act
2 performed.

3 (b) Fees for a notary public, agency, or any other person
4 who is not an attorney filling out legalization forms or
5 applications related to the Immigration Reform and Control Act
6 of 1986 shall be as follows:

7 (1) \$75 per person;

8 (2) \$75 per person up to 4 persons per immediate family,
9 with no additional charge for a fifth or subsequent person
10 where all persons are legally related;

11 (3) \$10 per page for the translation of a non-English
12 language into English where such translation is required for
13 legalization forms;

14 (4) \$1 for notarizing; and

15 (5) \$3 to execute any procedures necessary to obtain a
16 document required to complete legalization forms.

17 Fees authorized under this subsection shall not include
18 application fees required to be submitted with a legalization
19 application in conformity with the Immigration and Control Act
20 of 1986.

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

26 (c) Upon his own information or upon complaint of any
27 person, the Attorney General or any State's Attorney, or their
28 designee, may maintain an action for injunctive relief in the
29 court against any notary public or any other person who
30 violates the provisions of subsection (b) of this Section.
31 These remedies are in addition to, and not in substitution for,
32 other available remedies.

33 If the Attorney General or any State's Attorney fails to
34 bring an action as provided pursuant to this subsection any
35 person may file a civil action to enforce the provisions of
36 this subsection and maintain an action for injunctive relief.

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

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

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

10 (815 ILCS 505/2AA)

11 Sec. 2AA. Immigration services.

12 (a) "Immigration matter" means any proceeding, filing, or
13 action affecting the nonimmigrant, immigrant or citizenship
14 status of any person that arises under immigration and
15 naturalization law, executive order or presidential
16 proclamation of the United States or any foreign country, or
17 that arises under action of the United States Immigration and
18 Naturalization Service, the United States Department of Labor,
19 or the United States Department of State.

20 "Immigration assistance service" means any advice,
21 guidance, information, or action provided or offered to
22 customers or prospective customers relating to any immigration
23 matter.

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

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

31 "Reasonable costs" means actual costs or, if actual costs
32 cannot be calculated, reasonably estimated costs of such things
33 as photocopying, telephone calls, document requests, and
34 filing fees for immigration forms, and other nominal costs

1 incidental to assistance in an immigration matter.

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

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

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

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

28 (3) A not-for-profit organization recognized by the
29 Board of Immigration Appeals under 8 C.F.R. 292.2(a) and
30 employees of those organizations accredited under 8 C.F.R.
31 292.2(d).

32 (4) Any organization employing or desiring to employ an
33 alien or nonimmigrant alien, where the organization, its
34 employees or its agents provide advice or assistance in
35 immigration matters to alien or nonimmigrant alien
36 employees or potential employees without compensation from

1 the individuals to whom such advice or assistance is
2 provided.

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

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

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

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

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

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

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

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

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

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

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

36 (9) Arranging for the performance of medical testing

1 (including X-rays and AIDS tests) and the obtaining of
2 reports of such test results.

3 (10) Conducting English language and civics courses.

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

7 The Attorney General may promulgate rules establishing
8 maximum fees that may be charged for the services described in
9 this subsection. The maximum fees must be reasonable in light
10 of the costs of providing those services and the degree of
11 professional skill required to provide the services.

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

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

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

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

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

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

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

36 (e) Any person who provides or offers immigration

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

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

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

15 (3) The fee schedule.

16 (4) The statement that "You may cancel any contract
17 within 3 working days and get your money back for services
18 not performed."

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

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

1 same message.

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

16 Failure to follow the procedures of this subsection shall
17 result in a fine of \$1,000. The second violation shall result
18 in suspension of notary authorization. The third violation
19 shall result in permanent revocation of the commission of
20 notary public. Violations shall not preempt or preclude
21 additional appropriate criminal or civil penalties.

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

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

26 (h) A customer has the right to rescind a contract within
27 72 hours after his or her signing of the contract.

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

30 (j) No person engaged in providing immigration services
31 shall do any of the following:

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

36 (2) Retain any compensation for service not performed.

1 (2.5) Accept payment for immigration advice or
2 assistance.

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

8 (4) Represent or advertise, in connection with the
9 provision assistance in immigration matters, other titles
10 of credentials, including but not limited to "notary
11 public" or "immigration consultant," that could cause a
12 customer to believe that the person possesses special
13 professional skills or is authorized to provide advice on
14 an immigration matter; provided that a notary public
15 appointed by the Illinois Secretary of State may use the
16 term "notary public" if the use is accompanied by the
17 statement that the person is not an attorney; The term
18 "notary public" may not be translated to another language;
19 for example "notario" is prohibited.

20 (5) Give any legal advice concerning an immigration
21 matter including how to complete any forms related to
22 immigration services of the United States Department of
23 Homeland Security.

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

27 (k) (Blank)

28 (l) (Blank)

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

34 Upon his own information or upon the complaint of any
35 person, the Attorney General or any State's Attorney, or a
36 municipality with a population of more than 1,000,000, may

1 maintain an action for injunctive relief and also seek a civil
2 penalty not exceeding \$50,000 in the circuit court against any
3 person who violates any provision of this Section. These
4 remedies are in addition to, and not in substitution for, other
5 available remedies.

6 If the Attorney General or any State's Attorney or a
7 municipality with a population of more than 1,000,000 fails to
8 bring an action as provided under this Section any person may
9 file a civil action to enforce the provisions of this Article
10 and maintain an action for injunctive relief, for compensatory
11 damages to recover prohibited fees, or for such additional
12 relief as may be appropriate to deter, prevent, or compensate
13 for the violation. In order to deter violations of this
14 Section, courts shall not require a showing of the traditional
15 elements for equitable relief. A prevailing plaintiff may be
16 awarded 3 times the prohibited fees or a minimum of \$1,000 in
17 punitive damages, attorney's fees, and costs of bringing an
18 action under this Section. It is the express intention of the
19 General Assembly that remedies for violation of this Section be
20 cumulative.

21 (n) No unit of local government, including any home rule
22 unit, shall have the authority to regulate immigration
23 assistance services unless such regulations are at least as
24 stringent as those contained in this amendatory Act of 1992. It
25 is declared to be the law of this State, pursuant to paragraph
26 (i) of Section 6 of Article VII of the Illinois Constitution of
27 1970, that this amendatory Act of 1992 is a limitation on the
28 authority of a home rule unit to exercise powers concurrently
29 with the State. The limitations of this Section do not apply to
30 a home rule unit that has, prior to the effective date of this
31 amendatory Act, adopted an ordinance regulating immigration
32 assistance services.

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

35 (p) The Attorney General shall issue rules not inconsistent
36 with this Section for the implementation, administration, and

1 enforcement of this Section by January 1, 1995. The rules may
2 provide for the following:

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

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

8 (3) Any additional requirements deemed necessary.

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

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