



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0233

Introduced 2/2/2005, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

815 ILCS 505/2AA

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that the Attorney General may promulgate rules establishing the maximum fees that may be charged for other immigration assistance services that the Attorney General determines by rule may be appropriately performed. Provides that the maximum fee must be reasonable in light of the costs of providing those services and the degree of professional skill required to provide the services. Deletes a provision requiring the Attorney General to issue rules related to immigration services by January 1, 1995. Effective immediately.

LRB094 05072 RXD 36490 b

1 AN ACT concerning business.

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

4 Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 2AA as follows:

6 (815 ILCS 505/2AA)

7 Sec. 2AA. Immigration services.

8 (a) "Immigration matter" means any proceeding, filing, or
9 action affecting the nonimmigrant, immigrant or citizenship
10 status of any person that arises under immigration and
11 naturalization law, executive order or presidential
12 proclamation of the United States or any foreign country, or
13 that arises under action of the United States Citizenship and
14 Immigration Services, the United States Department of Labor, or
15 the United States Department of State.

16 "Immigration assistance service" means any information or
17 action provided or offered to customers or prospective
18 customers related to immigration matters, excluding legal
19 advice, recommending a specific course of legal action, or
20 providing any other assistance that requires legal analysis,
21 legal judgment, or interpretation of the law.

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

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

29 "Reasonable costs" means actual costs or, if actual costs
30 cannot be calculated, reasonably estimated costs of such things
31 as photocopying, telephone calls, document requests, and
32 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 Fees for a notary public, agency, or any other person who
8 is not an attorney or an accredited representative filling out
9 immigration forms shall be limited to the maximum fees set
10 forth in subsections (a) and (b) of Section 3-104 of the Notary
11 Public Act (5 ILCS 312/3-104). The maximum fee schedule set
12 forth in subsections (a) and (b) of Section 3-104 of the Notary
13 Public Act shall apply to any immigration consultants
14 performing the services described therein. The Attorney
15 General may promulgate rules establishing maximum fees that may
16 be charged for any services not described in that subsection.
17 The maximum fees must be reasonable in light of the costs of
18 providing those services and the degree of professional skill
19 required to provide the services.

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

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

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

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

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

35 (3) A statement that documents submitted in support of
36 an application for nonimmigrant, immigrant, or

1 naturalization status may not be retained by the person for
2 any purpose, including payment of compensation or costs.

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

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

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

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

23 (3) The fee schedule.

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

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

29 Every person engaged in immigration assistance service who
30 is not an attorney who advertises immigration assistance
31 service in a language other than English, whether by radio,
32 television, signs, pamphlets, newspapers, or other written
33 communication, with the exception of a single desk plaque,
34 shall include in the document, advertisement, stationery,
35 letterhead, business card, or other comparable written
36 material the following notice in English and the language in

1 which the written communication appears. This notice shall be
2 of a conspicuous size, if in writing, and shall state: "I AM
3 NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS AND MAY
4 NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such
5 advertisement is by radio or television, the statement may be
6 modified but must include substantially the same message.

7 Any person who provides or offers immigration assistance
8 service and is not exempted from this Section shall not, in any
9 document, advertisement, stationery, letterhead, business
10 card, or other comparable written material, literally
11 translate from English into another language terms or titles
12 including, but not limited to, notary public, notary, licensed,
13 attorney, lawyer, or any other term that implies the person is
14 an attorney. To illustrate, the word "notario" is prohibited
15 under this provision.

16 If not subject to penalties under subsection (a) of Section
17 3-103 of the Notary Public Act (5 ILCS 312/3-103), violations
18 of this subsection shall result in a fine of \$1,000. Violations
19 shall not preempt or preclude additional appropriate civil or
20 criminal penalties.

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

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

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

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

29 (j) No person engaged in providing immigration services who
30 is not exempted under this Section shall do any of the
31 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 in exchange for providing legal
2 advice or any other assistance that requires legal
3 analysis, legal judgment, or interpretation of the law.

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

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

21 (5) Provide legal advice, recommend a specific course
22 of legal action, or provide any other assistance that
23 requires legal analysis, legal judgment, or interpretation
24 of the law.

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

28 (k) (Blank)

29 (l) (Blank)

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

35 Upon his own information or upon the complaint of any
36 person, the Attorney General or any State's Attorney, or a

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

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

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

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

36 (p) The Attorney General shall issue rules not inconsistent

1 with this Section for the implementation, administration, and
2 enforcement of this Section ~~by January 1, 1995~~. The rules may
3 provide for the following:

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

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

9 (3) Any additional requirements deemed necessary.

10 (Source: P.A. 93-1001, eff. 8-23-04.)

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