

HB5945



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5945

by Rep. Silvana Tabares

SYNOPSIS AS INTRODUCED:

815 ILCS 505/2AA

Amends the Consumer Fraud and Deceptive Business Practice Act. Changes the word "alien" to "undocumented immigrant" when "alien" refers to someone not legally admitted to the United States.

LRB099 15978 AXK 40295 b

A BILL FOR

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.

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

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

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

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

26 (1) An attorney licensed to practice law in any state

1 or territory of the United States, or of any foreign
2 country when authorized by the Illinois Supreme Court, to
3 the extent the attorney renders immigration assistance
4 service in the course of his or her practice as an
5 attorney.

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

11 (3) A not-for-profit organization recognized by the
12 Board of Immigration Appeals under 8 C.F.R. 292.2(a) and
13 employees of those organizations accredited under 8 C.F.R.
14 292.2(d).

15 (4) Any organization employing or desiring to employ an
16 undocumented immigrant ~~alien~~ or nonimmigrant alien, where
17 the organization, its employees or its agents provide
18 advice or assistance in immigration matters to
19 undocumented immigrants ~~alien~~ or nonimmigrant alien
20 employees or potential employees without compensation from
21 the individuals to whom such advice or assistance is
22 provided.

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

26 All other persons providing or offering to provide

1 immigration assistance service shall be subject to this
2 Section.

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

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

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

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

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

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

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

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

1 immigration matter.

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

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

7 (10) Conducting English language and civics courses.

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

11 Fees for a notary public, agency, or any other person who
12 is not an attorney or an accredited representative filling out
13 immigration forms shall be limited to the maximum fees set
14 forth in subsections (a) and (b) of Section 3-104 of the Notary
15 Public Act (5 ILCS 312/3-104). The maximum fee schedule set
16 forth in subsections (a) and (b) of Section 3-104 of the Notary
17 Public Act shall apply to any person that provides or offers to
18 provide immigration assistance service performing the services
19 described therein. The Attorney General may promulgate rules
20 establishing maximum fees that may be charged for any services
21 not described in that subsection. The maximum fees must be
22 reasonable in light of the costs of providing those services
23 and the degree of professional skill required to provide the
24 services.

25 No person subject to this Act shall charge fees directly or
26 indirectly for referring an individual to an attorney or for

1 any immigration matter not authorized by this Article, provided
2 that a person may charge a fee for notarizing documents as
3 permitted by the Illinois Notary Public Act.

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

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

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

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

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

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

23 (e) Any person who provides or offers immigration
24 assistance service and is not exempted from this Section, shall
25 post signs at his or her place of business, setting forth
26 information in English and in every other language in which the

1 person provides or offers to provide immigration assistance
2 service. Each language shall be on a separate sign. Signs shall
3 be posted in a location where the signs will be visible to
4 customers. Each sign shall be at least 11 inches by 17 inches,
5 and shall contain the following:

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

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

12 (3) The fee schedule.

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

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

18 Every person engaged in immigration assistance service who
19 is not an attorney who advertises immigration assistance
20 service in a language other than English, whether by radio,
21 television, signs, pamphlets, newspapers, or other written
22 communication, with the exception of a single desk plaque,
23 shall include in the document, advertisement, stationery,
24 letterhead, business card, or other comparable written
25 material the following notice in English and the language in
26 which the written communication appears. This notice shall be

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

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

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

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

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

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

26 (i) Any documents identified in paragraph (3) of subsection

1 (c) shall be returned upon demand of the customer.

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

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

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

10 (2.5) Accept payment in exchange for providing legal
11 advice or any other assistance that requires legal
12 analysis, legal judgment, or interpretation of the law.

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

18 (4) Represent or advertise, in connection with the
19 provision assistance in immigration matters, other titles
20 of credentials, including but not limited to "notary
21 public" or "immigration consultant," that could cause a
22 customer to believe that the person possesses special
23 professional skills or is authorized to provide advice on
24 an immigration matter; provided that a notary public
25 appointed by the Illinois Secretary of State may use the
26 term "notary public" if the use is accompanied by the

1 statement that the person is not an attorney; the term
2 "notary public" may not be translated to another language;
3 for example "notario" is prohibited.

4 (5) Provide legal advice, recommend a specific course
5 of legal action, or provide any other assistance that
6 requires legal analysis, legal judgment, or interpretation
7 of the law.

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

11 (k) (Blank)

12 (l) (Blank)

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

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

26 If the Attorney General or any State's Attorney or a

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

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

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

3 (p) The Attorney General shall issue rules not inconsistent
4 with this Section for the implementation, administration, and
5 enforcement of this Section. The rules may provide for the
6 following:

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

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

12 (3) Any additional requirements deemed necessary.

13 (Source: P.A. 93-1001, eff. 8-23-04; 94-238, eff. 7-14-05.)