Legislative Analysis

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IMMIGRATION CLERICAL ASSISTANT ACT

House Bill 4983 (Substitute H-1)
Sponsor: Rep. Steve Tobocman

House Bill 4984 (Substitute H-2)
Sponsor: Rep. Bill Huizenga

Committee: Criminal Justice
First Analysis (3-9-04)

BRIEF SUMMARY: House Bill 4983 would create the Michigan Immigration Clerical Assistant Act to regulate those who provide services relating to immigration matters, to provide exemptions to registration requirements, to prohibit certain actions by a registrant, and to establish administrative and criminal sanctions for violations of the act. House Bill 4984 would place the felony penalties for a subsequent violation of the act within the sentencing guidelines section of the Code of Criminal Procedure.

FISCAL IMPACT: There is no information at present.

THE APPARENT PROBLEM:

Michigan, with its blend of educational institutions, automotive and industrial plants, and agricultural businesses, has attracted over a half million individuals from other countries, ranking the state 12th in the nation for foreign-born population. Obviously, many of these individuals, whether here legally or illegally, need assistance in filling out and filing immigration-related materials. Those who cannot afford the services of an attorney specializing in immigration law often turn to immigration consultants. Herein lies the problem that this legislative package aims to address.

Michigan prohibits the unauthorized practice of law. Individuals needing legal advice and services can hire attorneys who specialize in immigration law. Free or reduced-cost legal advice and services for low-income immigrants are also provided by some attorneys and by organizations (e.g., non-profit religious, charitable, social service, or similar organizations) that are recognized by the Board of Immigration Appeals. In general, only attorneys and accredited representatives of the recognized organizations can represent an individual in proceedings before an immigration court, though there are a few exceptions.

However, there are some immigration-related services that do not involve giving legal advice and that could be performed by others. Indeed, hundreds, if not thousands, of "immigration consultants" have set up shop in Michigan and across the nation to provide such services. While some are reputable, many are not. From coast to coast, stories abound of immigrants being charged hundreds, and in some cases thousands, of dollars for help with filling out and filing documents only to have nothing done on their behalf.

Besides the loss of money or delays in receiving a work permit or visa, failure to properly complete forms or filing an incorrect form can have dire consequences for the immigrant seeking legal status, naturalization, or a work permit. For instance, filing what is considered to be a frivolous application for amnesty results in immediate deportation and the person can be permanently barred from reentering the country.

Within Michigan, many immigration law attorneys and recognized organizations have received complaints from immigrants about fraudulent and deceptive practices by immigration consultants, as well as low-quality work by incompetent consultants that produced little, if any, benefit to the consumer. Due to unfamiliarity with English and state and federal laws, many immigrants are hesitant to file complaints with the appropriate authorities or unable to afford legal assistance to bring a civil action. Some do not know that there is a problem until they are detained by immigration officials and scheduled for deportation - at which time little can be done to undo the damage caused by the immigration consultant. Moreover, some of these immigration consultants engage in the unlawful practice of law, such as one mid-Michigan consultant who failed to file a client's paperwork and then advised him not to appear at the deportation hearing triggered by that missing paperwork. Besides constituting the unlawful practice of law, the advice was wrong; failure to appear at a deportation hearing is grounds for immediate deportation and the ruling is rarely overturned.

According to attorneys, there is little recourse under Michigan law for someone damaged by the unfair and deceptive practices of an immigration consultant. Provisions of the Consumer Protection Act do not fit the circumstances of many immigration cases. Though these immigration consultants can be prosecuted for engaging in the unlawful practice of law or sued in a civil action, many leave the area or the country and cannot be found. At the urging of immigration law attorneys and federally recognized organizations that assist immigrants, legislation has been offered to require those offering immigration services to be listed on a state registry, require compliance with advertising and contract language, require a bond to be posted, and provide for criminal and civil penalties.

THE CONTENT OF THE BILLS:

House Bill 4983 would require an immigration clerical assistant to apply to the Department of Labor and Economic Growth for inclusion in the Immigration Clerical Assistant Registry. An "immigration clerical assistant" would be defined as a person who, for compensation, provided or offered to provide services relating to any immigration matter. An "immigration matter" would mean any matter affecting the immigrant, nonimmigrant, or citizenship status of any person and would include, but not be limited to, federal or state administrative or court proceedings and/or the filing of accompanying documents in those proceedings.

Exemptions. The bill would exempt a licensed attorney and those working under his or her supervision; a law student or law school graduate under the supervision of a licensed attorney; a reputable person who had a personal, family, or business relationship with the

individual needing immigration assistance if the assistance was uncompensated; a nonprofit religious, charitable, social service or similar organization recognized by the Board of Immigration Appeals and any person representing such an organization who had been accredited by the board; and any organization or individual who performed only the following services specified in the bill relating to immigration matters: referring the consumer to an attorney, translating documents into English, properly notarizing signatures on documents, taking or arranging for the taking of photographs or fingerprints, arranging for medical testing and helping to obtain results of the medical tests, conducting English language and civics courses for consumers, and conducting educational or experiential evaluations, or combinations of educational and experiential evaluations.

A "business relationship" would mean a relationship with any of the following:

- A person serving as a designated school official or principal designated school official as defined by the U.S. Citizenship and Immigration Services, but only where acting within the scope of authority in that capacity on behalf of the designated educational institution.

- An individual serving as a responsible officer or alternate responsible officer as defined by the U.S. Department of State, but only where acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.

- An individual regularly employed by other than a sole proprietorship in a position that required the employee to process immigration matters on behalf of and as a representative of the employer relative to employment by an employee or prospective employee and who received no direct or indirect compensation from those employees or prospective employees.

Registry and registration requirements. The department would have to establish the Immigration Clerical Assistant Registry within 90 days of the bill's effective date. The registry would have to be available electronically or provided in written form to a member of the public upon electronic or written request. The department would have to charge a one-time fee for placement in the registry; the fee would be designed to only cover the costs of administering the registry and could not exceed $250.

A registrant would also be required to file and maintain a surety bond or cash bond of not less than $50,000. The name of the bond company and the number or other identifying information regarding the bond would have to be displayed prominently in the immigration clerical assistant's place of business. A person could bring an action upon the bond for damages if damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide promised services; however, the aggregate liability could not exceed the sum of the bond. The surety on the bond would have the right to cancel or terminate the bond with 30 days' written notice to the person it was issued to and the department; the surety would then be relieved of liability for a breach of condition that occurred after the cancellation date or termination. An action on the bond

would have to be commenced within one year of the bond's cancellation or termination. Failure to give a new bond within 30 days after the department was given notice of an existing bond's cancellation or termination would result in the automatic suspension of the immigration clerical assistant's listing on the registry.

An immigration clerical assistant would have to do the following:

- Apply to the department for placement in the registry and pay the applicable fee; the application would have to be submitted in written, electronic, or other departmentally acceptable form and include, at a minimum, the person's name, date of birth, address, telephone and fax numbers, e-mail or website address, and the name of a contact person.

- Provide the department with the name of the bonding company issuing the required bond and the number or other identifying information contained on the bond.

- Update the information included in the registry as changes occur.

- Enter into a written contract with a consumer before any service was rendered and before accepting any compensation. The bill would specify what information must be included in the contract, including a notice to the consumer that he or she could rescind the transaction within 72 hours of the execution of the contract and a notice that an immigration clerical assistant is not an attorney and therefore not authorized to provide legal services or offer legal advice of any kind. Any deposit, down payment, or other compensation received would have to be returned to the consumer if he or she rescinded the transaction.

- Deliver to the consumer copies of completed documents that included the name and business address of the immigration clerical assistant.

- Retain copies of all completed documents and forms completed for at least three years.

- Return all original documents to the consumer.

- Promptly deliver to the consumer all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on the consumer's behalf. "Promptly" would mean within 14 days, except that correspondence from a federal agency that required a response within 30 days would have to be delivered to the consumer within seven days.

- Not charge more than $20 per page for translation of supporting documentation; not more than $10 per page to complete a government agency form; only charge the allowable amount under law for notarial acts; and charge a reasonable and

fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

Prohibited acts. Among numerous things, the bill would prohibit a registrant from offering or giving legal advice on specified subjects; engaging in the unauthorized practice of law; representing that the services rendered or offered constituted legal advice or legal services; falsely representing that the offering or provision of services are necessary, and that the consumer's or his or her family would be adversely affected unless the immigration clerical assistant's services were used; failing to reveal material facts regarding an immigration matter, the failure of which would tend to mislead or deceive the consumer; charging excessive prices for services rendered; engaging in unfair or deceptive methods, acts, or practices; acting as an intermediary between the consumer and the federal government in an immigration matter; promising, orally or in writing, a guarantee or promise for a specific immigration benefit or result; and representing or implying that he or she would be able to obtain special influence over, or treatment from, a government entity in regards to an immigration matter.

A registrant would also be prohibited from literally translating from English into another language terms or titles that would imply that the person was an attorney (e.g., notary public, notary, licensed, attorney, lawyer, etc.). "Literally translate" would be defined in the bill as translating a word or phrase without regard to the true meaning of the word or phrase in the language that was being translated.

Penalties. A registrant who violated the bill's provisions would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of not more than $1,000. A second or subsequent violation would be a felony punishable by imprisonment for not more than two years and/or a fine of not more than $10,000.

Moreover, a person injured by a registrant could bring an action for equitable relief or damages, or both. An action could also be brought by a person who, upon information and belief, claimed a violation had been committed by an immigration clerical assistant. A prevailing plaintiff would be granted reasonable attorney fees and costs.

The remedies and penalties would be cumulative and use of one remedy would not bar the use of any other remedy allowed under law.

A first violation of the bill's registry and/or bond requirements would subject the registrant to a departmental cease and desist order. The order would have to indicate a time for compliance not to exceed 90 days. A second or subsequent violation of the registry or bonding requirements would subject the person to the civil and criminal penalties of the bill.

The penalty provisions would not apply to an immigration clerical assistant that was a tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code that was included in the registry and that complied with the bill's bonding requirement

and the service charge requirements, or an employee or volunteer of such an organization.

The bill would take effect October 1, 2004.

House Bill 4984 would amend the Code of Criminal Procedure (MCL 777.13p) to specify that a subsequent violation of the Michigan Immigration Clerical Assistant Act would be a Class F felony against the public trust with a maximum term of imprisonment of four years. The bill is tie-barred to House Bill 4983.

ARGUMENTS:

For:

An article entitled "Exploiting Immigrants" in the *Metrotimes* (Nov. 5-11, 2003), a Detroit weekly paper, chronicled the growing problem in the state of so-called immigration consultants who prey on immigrants by charging outrageous fees to fill out or file immigration-related documents, who give legal advice with little understanding of the complexities of immigration law, who promise results that can't be delivered, who pass themselves off as attorneys, and whose actions are directly responsible for the deportation of individuals otherwise eligible for legal status. For example, one attorney related the story of a man from Bangladesh who was in the country legally. The immigration consultant improperly filled out immigration papers for his wife; now the wife is ineligible to come to the U.S. for at least five years. In another case, a couple paid a Kalamazoo-area immigration consultant about $3,000 to file papers to help them get legal status for their three Mexican-born grandsons. The consultant never returned the couple's phone calls and kept possession of the children's original immigration documents. The couple was never told that they could have obtained legal status for the children via adoption. By time a law suit was filed and the documents were returned, the grandchildren were too old to adopt and there are no legal recourses to obtain legal status for them.

Some of the problems regarding immigration consultants cited by attorneys revolve around deceptive business practices that make it difficult for an immigrant to pursue a legal recourse against the consultant. For example, many do not give copies of documents filed or receipts for fees charged to clients, thus avoiding a paper trail. Investigators found documents on almost 1,250 immigration cases in an abandoned shed when a notorious immigration consultant fled the state; the documents included original marriage and birth certificates and green cards. In addition, many use terms, such as notario publico (notary public), that in other cultures refer to attorneys.

The bills would address many of these problems: fees for some services would be set in statute and fees for non-specified services would have to be fair and reasonable; immigration clerical assistants, as they would be called, could not retain the original documents and would have to forward all documents and notices received on behalf of a client to that client in a timely manner; contracts that included notice of the 72-hour right of rescission would have to be signed; a $50,000 bond would have to be posted so that

clients could have some recourse to collect damages; clear boundaries for immigration clerical assistants and their clients regarding services that could, and could not, be provided would be established; a registry of immigration clerical assistants would be readily available to immigrants; and criminal and civil penalties would be created for registrants who violated the provisions of House Bill 4983. Also, an attorney or other person who becomes aware of violations of the bill could become the plaintiff in a civil suit on behalf of the general public. This is an important provision because many immigrants are reticent or afraid to go to authorities because of fears of deportation, embarrassment over being duped, or because of difficulties with the language and unfamiliar laws.

Meanwhile, House Bill 4983 would clearly exempt those who are legally authorized to provide legal advice and legal services to immigrants from the requirements and penalties under the bill, as well as those individuals who meet the definition under "business relationship". The bill won't prevent abuses altogether, but it will provide important consumer protection measures not in place now along with civil remedies and criminal penalties.

Against:

House Bill 4983 would seem to allow someone to set up a business as an immigration clerical assistant for profit but prohibits the business owner from soliciting business.

Response:

The bill defines "solicit" as contact with a specific consumer regarding the provision of immigration services. Means of advertisements such as billboards, mass mailings to a geographic area, ads in newspapers, or radio or television commercials would appear to be permissible as they target a general audience, not a specific person.

Against:

Several provisions on House Bill 4983 seem to be unclear. For instance, the bill would define "immigration matter" as encompassing a person's nonimmigrant status. That could therefore include virtually any activity or concern. If the bill is attempting to refer to obtaining passports or visas necessary for U.S. citizens to visit certain foreign countries, or for some foreign-born travelers to visit the U.S., perhaps the bill could be amended to be more specific.

Also, the bill specifically exempts nonprofit organizations, and their employees and volunteers that are listed on the registry and comply with the bonding requirements from civil and criminal penalties under the bill. This appears to be a blanket immunity from prosecution or civil suits regardless of the circumstances of a case; even the governmental immunity extended to agencies and employees of state and local governmental units does not apply to acts resulting from gross or willful misconduct or acts performed outside the person's scope of duties.

In addition, the bill makes a first offense a 93-day misdemeanor, but creates a fine that is double the maximum contained in statutes for other 93-day misdemeanors. Plus, the bill specifies that a first violation of the registration or bonding requirements would subject

an immigration clerical assistant to a departmental cease and desist order, but that second or subsequent violations would subject the person to the other penalty provisions. However, it is not clear if a second violation of the registration or bonding requirements would then be treated as a first offense and so subject the person to the misdemeanor penalties or if it would be treated as a second offense and subject the offender to the felony penalties.

POSITIONS:

Representatives from the following organizations indicated support for the bills to the House Committee on Criminal Justice on 2-25-04:

The Department of Labor and Economic Growth.
Catholic Human Development Outreach.
Michigan Migrant Legal Assistance Project, Inc.
LASED (Latin Americans for Social and Economic Development).
Michigan Advocacy Project.
Michigan Catholic Conference.
State Bar of Michigan.
Diocese of Kalamazoo/Immigration Assistance Program.
Office of Migrant Services.
Diocese of Grand Rapids – Hispanic Ministry.
Farmworker Legal Services.

The following organizations submitted letters in support of the bills:

Michigan Organizing Project. (7-14-03)
Western Michigan Legal Services. (7-18-03)
The law firm of Miller, Canfield, Paddock and Stone, P.L.C. (10-3-03)
The firm of Maroko and Landau. (9-19-03)
The firm of Butzel Long. (9-19-03)
Archdiocese of Detroit. (10-3-03)
Freedom House. (9-18-03)
Hispanic Center of Western Michigan. (7-21-03)
International Institute of Metropolitan Detroit, Inc. (9-24-03)
Kellogg Company. (2-23-04)

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