

## IMMIGRATION CLERICAL ASSISTANT ACT

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**House Bill 4983**

**Sponsor: Rep. Steve Tobocman**

**House Bill 4984**

**Sponsor: Rep. Bill Huizenga**

**Committee: Criminal Justice**

**Complete to 2-24-04**

### A SUMMARY OF HOUSE BILLS 4983 AND 4984 AS INTRODUCED 7-16-03

House Bill 4983 would create the Michigan Immigration Clerical Assistant Act to regulate those who provide services relating to immigration matters, provide exemptions to licensing requirements, establish minimum standards for licensing, prohibit certain actions by a licensee, and 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. A more detailed description of the bills follows.

House Bill 4983. The bill would prohibit a person from providing or offering to provide services or acting as an immigration clerical assistant unless licensed or exempted from licensure. An “immigration clerical assistant” would be defined as a person who provided or offered to provide services relating to immigration matters. An “immigration matter” would mean an action taken on behalf of any person for that person’s benefit regarding immigrant, nonimmigrant, or citizenship status of any person. It would include, but not be limited to, federal or state administrative and court proceedings and the filing of documents in those proceedings.

Exemptions. The bill would exempt a licensed attorney; a law student or law school graduate under the supervision of a licensed attorney; a person of good moral character who had a preexisting personal, family, or business relationship with the individual needing immigration assistance if the service was uncompensated; and an organization or individual accredited and recognized by the Board of Immigration Appeals under federal law.

A person and a nonprofit corporation or other person exempt under Section 501(c)(3) of the Internal Revenue Code could also apply to the Michigan Labor and Economic Growth Department (the bill references the Department of Consumer and Industry Services) for a three-year renewable exemption upon demonstrating adequate training and access to legal resources. A person exempted under this provision could not hold

himself or herself out as immigration clerical assistant but as a person exempted under the act and allowed to provide services for an individual consumer.

Persons exempt from the act would still be subject to laws and court rules prohibiting the unauthorized practice of law.

Titles. A person licensed under the act could only use the title “immigration clerical assistant” and unlicensed persons would be prohibited from using that title or similar sounding terms that would connote licensure.

Licensure requirements. A person would have to be at least 18 years of age and of good moral character; have the education, training, and experience prescribed by departmental rules; pass an examination prescribed by departmental rules; and have paid applicable application and license fees. The department could issue a license to a person who did not fulfill the education or examination requirements under certain conditions. Licenses would be issued for three years. Filing a change of address would be a licensee’s responsibility; if a renewal application or other notice sent by the department was not received by the licensee due to failure to report a change of address, the licensee could be subject to license sanctions or disciplinary actions. The department would also have to require a licensee to file and maintain a surety bond or cash bond of not less than \$50,000. A license could not be renewed if the bond were canceled or terminated.

Prohibited acts. Among numerous things, the bill would prohibit a licensee or person exempted under the bill 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’s life, safety, or welfare would be in jeopardy 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; and acting as an intermediary between the consumer and the Immigration and Naturalization Service (INS).

Penalties. According to provisions of the Administrative Procedures Act, a licensee who violated the bill’s provisions could be subject to license sanctions, restricted activities, and/or a fine up to \$25,000. He or she could also be subject to a civil fine of not more than \$100,000 for each violation in an action brought by the attorney general or a local prosecutor.

In addition, a person who violated the bill’s provisions would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a fine of not more than \$10,000 for each consumer with respect to whom a violation occurred. A second or subsequent violation would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$25,000 per consumer.

Moreover, a person injured by a licensee could bring an action for equitable relief or damages, or both. Damages would have to be awarded for actual damages plus an amount equal to three times the amount of the actual damages or \$1,000 per violation, whichever was greater. A prevailing plaintiff would be granted reasonable attorney fees and costs. The court could award exemplary damages; those would be awarded to the State Bar of Michigan Foundation Fund. The bill would also allow a class action to be brought against a licensee, with reasonable attorney fees and costs – and appropriate exemplary damages - being awarded to a prevailing plaintiff. Except in class actions, a person suffering a loss as a result of a violation of the bill could bring an action to recover actual damages or \$250, whichever was greater, together with reasonable attorney fees.

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

Miscellaneous provisions. The bill would:

- Set maximum fee amounts that could be charged for specific services and allow the department by rule to set maximum fees for other permissible services;
- require a licensee to enter into written contracts for proposed services and specify what information must be included in the contract;
- require a licensee to deliver to consumers copies of documents and forms completed on their behalves, retain copies of those documents and forms for at least three years, and return the original documents to the consumer; and
- allow the department to promulgate rules under the Administrative Procedures Act to enforce and administer the act.

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.

Legislative Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.