

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4983

A bill to regulate certain transactions involved in immigration matters and the providing of services in those matters; to set standards and security requirements involving certain immigration matters and persons engaged in immigration matters; to create a list of immigration clerical assistants; to provide for certain powers and duties for certain state agencies; and to provide for remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan immigration clerical assistant act".

3 Sec. 3. As used in this act:

4 (a) "Business relationship" means a relationship with any of
5 the following:

6 (i) An individual serving as a designated school official or
7 principal designated school official as defined by the United

1 States citizenship and immigration services, but only where
2 acting within the scope of authority in that capacity on behalf
3 of the designated educational institution.

4 (ii) An individual serving as a responsible officer or
5 alternate responsible officer as defined by the United States
6 department of state, but only where acting within the scope of
7 authority in that capacity on behalf of the designated exchange
8 visitor program.

9 (iii) An individual who is regularly employed by an employer
10 other than a sole proprietorship in a position that requires that
11 employee to process immigration matters on behalf of and as a
12 representative of the employer relative to employment by an
13 employee or prospective employee only with the employer and who
14 receives no compensation, directly or indirectly, from those
15 employees or prospective employees.

16 (iv) An individual who is employed by a federal or state
17 elected official involved in the processing of a visa application
18 or petition on behalf of or as a representative of a
19 constituent.

20 (b) "Compensation" means money, donations, property, promise
21 of payment, or anything else of value required in exchange for a
22 person's services.

23 (c) "Consumer" means a person who utilizes or seeks to
24 utilize the services of an immigration clerical assistant.

25 (d) "Department" means the department of labor and economic
26 growth.

27 (e) "Immigration clerical assistant" means any individual

1 providing or offering to provide services, for compensation,
2 relating to any immigration matter.

3 (f) "Immigration matter" means any matter affecting the
4 immigrant status, nonimmigrant status, or citizenship status of
5 any individual and includes, but is not limited to, federal or
6 state administrative or court proceedings or the filing of
7 accompanying documents in those proceedings, or both.

8 (g) "List" means the list of immigration clerical assistants
9 established by the department.

10 (h) "Services" means any action taken on behalf of any
11 consumer for the benefit of that consumer or another individual
12 regarding the immigrant status, nonimmigrant status, or
13 citizenship status of any consumer or other individual, and
14 includes, but is not limited to, the following:

15 (i) Transcribing responses onto government agency forms on
16 behalf of a consumer relating to an immigration matter.

17 (ii) Translating information from a government agency form to
18 a language other than English and translating responses on behalf
19 of a consumer relating to an immigration matter.

20 (iii) Drafting or completing an application or other paper on
21 behalf of a consumer in an immigration matter.

22 (iv) Giving advice to a consumer in an immigration matter.

23 (i) "Solicit" means any contact with a specific consumer by
24 an immigration clerical assistant or his or her agent,
25 representative, or employee regarding the provision of services,
26 for compensation, regarding an immigration matter or the
27 provision of services. Solicit does not include letters or

1 advertising distributed generally to persons not known to need
2 the services of an immigration clerical assistant.

3 Sec. 4. An individual shall not provide services or offer
4 to provide services, or act as an immigration clerical assistant,
5 unless the individual is placed on the list established under
6 this act or unless the individual is exempted under section 5
7 from placement on the list.

8 Sec. 5. The following are exempt from this act:

9 (a) An attorney at law licensed to practice law in any state
10 or territory of the United States and his or her legal and other
11 support staff working under his or her direct supervision.

12 (b) A law student or law school graduate not yet admitted to
13 the bar who is supervised by an attorney licensed to practice law
14 in any state or territory of the United States.

15 (c) A reputable individual who has a personal, family, or
16 business relationship with the individual subject to the
17 immigration matter and is engaged in an immigration matter for
18 that individual without compensation.

19 (d) A nonprofit religious, charitable, social service, or
20 similar organization recognized by the board of immigration
21 appeals, and any individual representing such an organization who
22 has been accredited by the board of immigration appeals.

23 (e) Any individual representing or acting on behalf of an
24 organization who performs only the following services:

25 (i) Translating documents from a language other than English
26 into English in an immigration matter.

27 (ii) Properly notarizing signatures on documents in an

1 immigration matter.

2 (iii) Referring the consumer to an attorney in an immigration
3 matter.

4 (iv) Taking or arranging for the taking of photographs or
5 fingerprints in an immigration matter.

6 (v) Arranging for the performance of medical testing and
7 assisting with the obtaining of such medical examination results
8 in an immigration matter.

9 (vi) Conducting English language and civics courses for
10 consumers in an immigration matter.

11 (vii) Conducting educational or experiential evaluations, or
12 combinations of educational and experiential evaluations, for
13 consumers in an immigration matter.

<<(f) A nonprofit religious, charitable, social service, or similar
organization that provides the services listed under subdivision (e)
without compensation.

(g) A translation business that meets the following criteria:

(i) Was an active member of the American translators association on
September 1, 2001, and abides by and is subject to its code of ethical
practices.

(ii) Is incorporated.

(iii) Keeps commercial offices in the state of Michigan.

(iv) Derives 90% of its income from the translation business.

(v) Has sales exceeding \$100,000.00 per year in the translation
business.

(vi) Was engaged in the translation business on September 1, 2001.>>

14 Sec. 7. (1) An immigration clerical assistant shall apply
15 to the department for placement on the list established under
16 section 9.

17 (2) An applicant for placement on the list shall pay the
18 appropriate fee and submit in written, electronic, or other form
19 acceptable to the department the application that shall include,
20 at a minimum, the name, date of birth, residential and business
21 addresses denoting a specific location other than a post office
22 box, telephone number, facsimile number, and e-mail or website
23 address.

24 (3) The applicant shall provide in a manner acceptable to the
25 department the name of the bonding company issuing the bond
26 required under this act and the number or other identifying
27 information regarding the bond.

1 (4) An immigration clerical assistant placed on the list
2 shall, upon change of any of the information submitted on the
3 application under subsections (2) and (3), update that
4 information and submit it to the department in a manner
5 acceptable to the department within 14 days after the change.

6 Sec. 9. (1) There is created an immigration clerical
7 assistant list in the department. Within 180 days after the
8 effective date of this act, the department shall establish the
9 list as a fully functional program complying with the
10 prescriptions of this section.

11 (2) The list shall be made available electronically or in
12 written form to any member of the general public upon electronic
13 or written request. The list shall include under each individual
14 the individual's name, residential and business address denoting
15 a specific location other than a post office box, telephone
16 number, facsimile number, and e-mail or website address.

17 (3) In order to cover the costs of developing, maintaining,
18 and administering the list, the department shall impose the
19 following fees:

20 (a) A nonrefundable application fee of \$250.00 for any of the
21 following:

22 (i) Original placement on the list for a period of 3 years.

23 (ii) Renewal applications received more than 60 days after
24 the expiration date of placement on the list.

25 (iii) Application for reactivation of placement on the list
26 that was removed by the department for noncompliance with this
27 act or by an order of a court of competent jurisdiction.

1 (b) A nonrefundable renewal listing fee for a 3-year period
2 in the amount of \$90.00.

3 (c) A nonrefundable late fee of \$20.00 for renewals received
4 up to 60 days following the expiration date of placement on the
5 list.

6 (d) A nonrefundable fee of \$20.00 for changes to a current
7 placement on the list, including, but not limited to, address,
8 name, or bond information.

9 (4) An individual who fails to renew his or her placement on
10 the list on or before the expiration date may be removed from the
11 list by the department and shall not provide services or act or
12 offer to act as an immigration clerical assistant beyond the
13 expiration date.

14 (5) An individual who is removed from the list for failure to
15 renew his or her placement on the list or who is otherwise
16 removed from the list by the department for noncompliance with
17 this act or removed by order of a court of competent jurisdiction
18 shall not provide services and shall not act or offer to act as
19 an immigration clerical assistant.

20 Sec. 11. An immigration clerical assistant may charge the
21 following for services:

22 (a) Not more than \$20.00 per page for translation of
23 supporting documentation.

24 (b) Not more than \$10.00 per page to complete a government
25 agency form.

26 (c) The amount allowed under law for notarial acts.

27 (d) A reasonable and fair fee for other services that

1 include, but are not limited to, photocopying, mailing, and
2 telephone calls.

3 Sec. 13. (1) An immigration clerical assistant shall enter
4 into a written contract with a consumer before any service is
5 rendered and before accepting any compensation.

6 (2) The contract shall be written in English and shall
7 include a written translation into the primary language
8 understood by the consumer if the consumer is not a native
9 speaker of English. The contract shall embody all the terms and
10 conditions of the agreement to provide services, including, but
11 not limited to, the following:

12 (a) The name and address of the immigration clerical
13 assistant.

14 (b) The date and time of the transaction.

15 (c) A description of the services to be provided and the
16 itemized cost of each service.

17 (d) The name and address of the bonding company or other
18 surety that has issued the bond required under section 15.

19 (3) An immigration clerical assistant shall not orally amend
20 or supplement the written contract and shall not make any
21 statement that contradicts or is inconsistent with the terms of
22 the written contract. A copy of the executed contract shall be
23 provided to the consumer at the time of execution.

24 (4) The consumer has 72 hours from the execution of the
25 contract to rescind the transaction. A notice of the consumer's
26 right to rescind shall be included in the contract in English and
27 shall be translated with substantially similar meaning into the

1 primary language understood by the consumer in substantially the
2 following form:

3 "You, the consumer, may cancel this transaction at any time
4 prior to 72 hours following the date and time that this contract
5 is signed by you. You may cancel this transaction, without any
6 penalty or obligation, by writing "CANCEL" across your signature
7 and returning a copy to the immigration clerical assistant or
8 his/her authorized representative."

9 (5) Upon rescission of the transaction, an immigration
10 clerical assistant shall promptly return to the person so
11 entitled to it any deposit, down payment, or other compensation
12 received from or on behalf of the consumer and shall return to
13 the consumer, or the individual upon whose behalf the consumer is
14 acting, all original documents, including notices, letters,
15 approvals, denials, receipts, or other correspondence received on
16 behalf of the consumer in any immigration matter.

17 (6) The contract shall state in a prominent place, in type
18 not smaller than 12-point font, a notice in English that shall be
19 translated with substantially similar meaning into the primary
20 language understood by the consumer, as follows:

21 "NOTICE: An immigration clerical assistant is NOT an
22 attorney and is not authorized to provide legal services or offer
23 legal advice of any kind."

24 Sec. 15. (1) An immigration clerical assistant shall file
25 and maintain in force a corporate surety or cash bond conditioned
26 upon the faithful and competent provision of services. The bond
27 shall be in a form used by the issuer and acceptable to the

1 department. The bond shall be in the sum of not less than
2 \$50,000.00.

3 (2) The bond shall be for the benefit of a person damaged by
4 fraud, misstatement, misrepresentation, unlawful act or omission,
5 or failure of the immigration clerical assistant or its agent,
6 representative, or employee to provide services as promised. A
7 person may bring an action upon the bond for damages as described
8 in this subsection. The aggregate liability to all injured
9 persons shall not exceed the sum of the bond.

10 (3) The surety on the bond shall have the right to cancel or
11 terminate the bond upon giving 30 days' written notice to the
12 person to whom it was issued and to the department and after that
13 date shall be relieved of liability for a breach of condition
14 occurring after the effective date of the cancellation or
15 termination. The failure to give a new bond within 30 days after
16 the notice to the department under this subsection operates as an
17 automatic removal of the immigration clerical assistant's
18 placement on the list. An action on the bond shall not be
19 commenced after the expiration of 1 year after the effective date
20 of the cancellation or termination of the bond.

21 (4) An immigration clerical assistant shall prominently
22 display in his or her place of business the name of the bond
23 company and the number or other identifying information regarding
24 the bond.

25 Sec. 17. (1) An immigration clerical assistant shall not do
26 any of the following:

27 (a) Offer or give legal advice including, but not limited to,

1 selecting the type of application or form to be submitted to a
2 government agency, recommending a procedure to be followed in
3 seeking a benefit under the immigration and nationality act,
4 chapter 477, 66 Stat. 163, 8 USC 1101, et seq., and altering or
5 deleting language on standard immigration forms.

6 (b) Engage in the unauthorized practice of law as determined
7 by a court of competent jurisdiction.

8 (c) Represent that the offering or the provision of services
9 is legal advice or legal services.

10 (d) Falsely represent that the offering or the provision of
11 services is necessary.

12 (e) Falsely represent that the offering or the provision of
13 services is in response to a request by or on behalf of a
14 consumer.

15 (f) Represent that the life, safety, or welfare of the
16 consumer and his or her family would be adversely affected if the
17 services of an immigration clerical assistant are not provided.

18 (g) Fail to reveal a material fact regarding an immigration
19 matter or regarding services, which fact could not be reasonably
20 known to the consumer, the omission of which tends to mislead or
21 deceive the consumer.

22 (h) Take advantage of a consumer's inability to protect his
23 or her interests when the immigration clerical assistant knows or
24 should reasonably know of a consumer's disability, illiteracy, or
25 inability to understand the language of any documentation or
26 government form.

27 (i) Regarding services not described in section 11, charge a

1 consumer a price for services that is not reasonable under the
2 circumstances.

3 (j) Make a false or fraudulent representation of fact or
4 statement material to the services provided.

5 (k) Fail to reveal facts material to the services provided in
6 light of representations of fact made in a positive manner.

7 (l) Engage in any method, act, or practice that is unfair or
8 deceptive.

9 (m) Act as an intermediary between the consumer and the
10 federal government in an immigration matter.

11 (n) Make any representation orally or in writing that the
12 immigration clerical assistant guarantees or promises a specific
13 immigration benefit or result.

14 (o) Represent or imply that the immigration clerical
15 assistant will be able to obtain any special influence over, or
16 treatment from, any government entity with respect to an
17 immigration matter.

18 (p) Make a false statement or representation to the
19 department as part of the application process for initial or
20 renewal placement on the list.

21 (q) Use a term implying that the individual placed on the
22 list is approved, certified, or licensed by the state of Michigan
23 or the federal government.

24 (2) An immigration clerical assistant shall not, in any
25 document, advertisement, stationery, letterhead, business card,
26 or other comparable written material describing the role of the
27 immigration clerical assistant, literally translate from English

1 into another language terms or titles including, but not limited
2 to, notary public, notary, licensed, attorney, lawyer, or any
3 other term that implies that the person is an attorney. As used
4 in this subsection, "literally translate" means the translation
5 of a word or phrase without regard to the true meaning of the
6 word or phrase in the language that is being translated.

7 Sec. 19. (1) An immigration clerical assistant shall
8 deliver to each consumer a copy of each document or form
9 completed on behalf of a consumer. Each document and form
10 executed or completed shall include the name, residential and
11 business address denoting a specific location other than a post
12 office box, telephone number, facsimile number, and e-mail or
13 website address of the immigration clerical assistant.

14 (2) An immigration clerical assistant shall retain copies of
15 all documents and forms completed or executed on behalf of a
16 consumer, or the individual upon whose behalf the consumer is
17 acting, for not less than 3 years.

18 (3) An immigration clerical assistant shall return all
19 original documents of the consumer, or the individual upon whose
20 behalf the consumer is acting, and not keep them in his or her
21 possession.

22 (4) An immigration clerical assistant shall promptly deliver
23 to each consumer, or the individual upon whose behalf the
24 consumer is acting, all original documents, including notices,
25 letters, approvals, denials, receipts, or other correspondence
26 received on behalf of the consumer, or the individual upon whose
27 behalf the consumer is acting, in any immigration matter. As

1 used in this subsection, "promptly" means either of the
2 following:

3 (a) In the case of correspondence from the agency of the
4 federal government that requires a response within 30 days after
5 receipt, within 7 days.

6 (b) In all other cases, within 14 days.

7 Sec. 21. (1) A person who violates this act is guilty of
8 the following:

9 (a) In the case of a first conviction, a misdemeanor
10 punishable by imprisonment for not more than 93 days or a fine of
11 not more than \$1,000.00, or both.

12 (b) In the case of a second or subsequent conviction, a
13 felony punishable by imprisonment for not more than 2 years or a
14 fine of not more than \$10,000.00, or both.

15 (2) A person injured by an immigration clerical assistant may
16 bring an action in a court of competent jurisdiction for
17 equitable relief or damages, or both. The court shall also grant
18 a prevailing plaintiff reasonable attorney fees and costs and may
19 order removal from the list for at least 5 years or as otherwise
20 ordered by the court.

21 (3) A person who, upon information and belief, claims a
22 violation of this act has been committed by an immigration
23 clerical assistant may bring an action in a court of competent
24 jurisdiction for equitable relief on behalf of the general
25 public. The court shall award a prevailing plaintiff reasonable
26 attorney fees and costs and may order removal from the list for
27 at least 5 years or as otherwise ordered by the court.

1 (4) The remedies and penalties in this act are cumulative and
2 use of 1 remedy under this act does not bar the use of any remedy
3 allowed under the Michigan consumer protection act, 1976 PA 331,
4 MCL 445.901 to 445.922, or the use of any other remedy allowed
5 under law.

6 (5) Notwithstanding any other provision of this section, a
7 first violation of the list requirement of section 7 or bonding
8 requirement of section 15, or both, shall subject the immigration
9 clerical assistant only to a notice of noncompliance issued by
10 the department. The department shall issue the notice of
11 noncompliance promptly, and the notice of noncompliance shall
12 indicate a time period for compliance not to exceed 90 days. A
13 second or subsequent violation of either or both of the
14 requirements described in this subsection shall subject a person
15 to the other provisions of this section.

16 (6) Upon notification of any kind to the department of an
17 individual acting as an immigration clerical assistant without
18 being placed on the list, failure to comply with the list
19 requirements, or of the failure to be in compliance with the
20 bonding requirement imposed under section 15, the department
21 shall issue a notice of noncompliance to that individual.

22 (7) As a precondition to the prosecution of an individual
23 under subsection (1) for failure of an individual acting as an
24 immigration clerical assistant to be placed on the list, failure
25 to comply with the list requirements, or for failure to comply
26 with the bonding requirement under section 15, the complainant
27 shall demonstrate that the department had sent a notice of

House Bill No. 4983 (S-1) as amended June 8, 2004

1 noncompliance to the person alleged to have violated this act.

2 (8) An immigration clerical assistant that is acting on
3 behalf of a tax-exempt nonprofit organization under section
4 501(c)(3) of the internal revenue code of 1986 that applies to
5 and is placed on the list and complies with the bonding
6 requirement of section 15 and the service charge requirements of
7 section 11, or an employee or volunteer of such an organization,
8 is exempt from this section.

[Enacting section 1. This act takes effect October 1, 2004.]