

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 registry; 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

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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]

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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 state  
6 administrative or court proceedings or the filing of accompanying  
7 documents in those proceedings, or both.

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

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

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

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

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

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

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

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1 the services of an immigration clerical assistant.

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

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

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

9 (c) A reputable [individual who has a personal, family, or business  
10 relationship with the individual subject to the immigration matter and  
11 is engaged in an immigration matter for that individual ]  
12 without compensation.

13 (d) A nonprofit religious, charitable, social service, or  
14 similar organization recognized by the board of immigration  
15 appeals, and any [individual] representing such an organization who has  
16 been accredited by the board of immigration appeals.

17 (e) Any [individual representing or acting on behalf of an  
18 organization] who performs only the  
19 following services:

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

22 (ii) Properly notarizing signatures on documents in an  
23 immigration matter.

24 (iii) Referring the consumer to an attorney in an immigration  
25 matter.

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

(v) Arranging for the performance of medical testing and

1 assisting with the obtaining of such medical examination results  
2 in an immigration matter.

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

5 (vii) Conducting educational or experiential evaluations, or  
6 combinations of educational and experiential evaluations, for  
7 consumers in an immigration matter.

8 Sec. 7. (1) An immigration clerical assistant shall apply  
9 to the department for inclusion in the registry established under  
10 section 9.

11 (2) An applicant for the registry shall pay the appropriate  
12 fee and submit in written, electronic, or other form acceptable  
13 to the department the application that shall include, at a  
14 minimum, the name, date of birth, address, telephone number,  
15 facsimile number, e-mail or website address, and the name of an  
16 individual who can be personally contacted.

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

21 (4) An immigration clerical assistant included in the  
22 registry shall, upon change of any of the information submitted  
23 on the application under subsections (2) and (3), update that  
24 information and submit it to the department in a manner  
25 acceptable to the department.

26 Sec. 9. (1) There is created an immigration clerical  
27 assistant registry in the department. Within 90 days after the

1 effective date of this act, the department shall establish the  
2 registry as a fully functional program complying with the  
3 prescriptions of this section.

4 (2) The registry shall be made available electronically or in  
5 written form to any member of the general public upon electronic  
6 or written request. The registry shall include under each [individual  
7 listed on the registry the individual's] name, address, telephone  
8 number, facsimile number, e-mail or website address, and the name  
9 of an individual who can be personally contacted.

10 [(3) In order to cover the costs of developing, maintaining, and  
11 administering the registry, the department shall impose the following  
12 fees:

- (a) An application fee of \$250.00 for any of the following:
  - (i) Original placement on the registry.
  - (ii) Renewal applications received more than 60 days after the expiration date of a listing on the registry.
  - (iii) Application for reactivation of a listing on the registry that was removed by the department for noncompliance with this act or by an order of a court.
- (b) Renewal registry fee for a 3-year period in the amount of \$90.00.
- (c) A late fee of \$20.00 for renewals received up to 60 days following the expiration date of the listing on the registry.
- (d) A fee of \$20.00 for changes to a current listing on the registry record, including, but not limited to, address, name, or bond information.]

13 Sec. 11. An immigration clerical assistant may charge the  
14 following for services:

- 15 (a) Not more than \$20.00 per page for translation of  
16 supporting documentation.
- 17 (b) Not more than \$10.00 per page to complete a government  
18 agency form.
- 19 (c) The amount allowed under law for notarial acts.
- 20 (d) A reasonable and fair fee for other services that  
21 include, but are not limited to, photocopying, mailing, and

22 telephone calls.

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

26       (2) The contract shall be written in English and shall  
27 include a written translation into the primary language

1 understood by the consumer if the consumer is not a native  
2 speaker of English. The contract shall embody all the terms and  
3 conditions of the agreement to provide services, including, but  
4 not limited to, the following:

5 (a) The name and address of the immigration clerical  
6 assistant.

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

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

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

12 (3) An immigration clerical assistant shall not orally amend  
13 or supplement the written contract and shall not make any  
14 statement that contradicts or is inconsistent with the terms of  
15 the written contract. A copy of the executed contract shall be  
16 provided to the consumer at the time of execution.

17 (4) The consumer has 72 hours from the execution of the  
18 contract to rescind the transaction. A notice of the consumer's  
19 right to rescind shall be included in the contract in English and  
20 shall be translated with substantially similar meaning into the  
21 primary language understood by the consumer in substantially the  
22 following form:

23 "You, the consumer, may cancel this transaction at any time  
24 prior to 72 hours following the date and time that this contract  
25 is signed by you. You may cancel this transaction, without any  
26 penalty or obligation, by writing "CANCEL" across your signature  
27 and returning a copy to the immigration clerical assistant or

1 his/her authorized representative."

2 (5) Upon rescission of the transaction, an immigration  
3 clerical assistant shall promptly return to the person so  
4 entitled to it any deposit, down payment, or other compensation  
5 received from or on behalf of the consumer.

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

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

13 Sec. 15. (1) An immigration clerical assistant shall file  
14 and maintain in force a corporate surety or cash bond conditioned  
15 upon the faithful and competent provision of services. The bond  
16 shall be in a form used by the issuer and acceptable to the  
17 department. The bond shall be in the sum of not less than  
18 \$50,000.00.

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

26 (3) The surety on the bond shall have the right to cancel or  
27 terminate the bond upon giving 30 days' written notice to the

1 person to whom it was issued and to the department and after that  
2 date shall be relieved of liability for a breach of condition  
3 occurring after the effective date of the cancellation or  
4 termination. The failure to give a new bond within 30 days after  
5 the notice to the department under this subsection operates as an  
6 automatic suspension of the immigration clerical assistant's  
7 listing on the registry. An action on the bond shall not be  
8 commenced after the expiration of 1 year after the effective date  
9 of the cancellation or termination of the bond.

10 (4) An immigration clerical assistant shall prominently  
11 display in his or her place of business the name of the bond  
12 company and the number or other identifying information regarding  
13 the bond.

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

16 (a) Offer or give legal advice including, but not limited to,  
17 selecting the type of application or form to be submitted to a  
18 government agency, recommending a procedure to be followed in  
19 seeking a benefit under the immigration and nationality act,  
20 chapter 477, 66 Stat. 163, 8 USC 1101, et seq., and altering or  
21 deleting language on standard immigration forms.

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

24 (c) Represent that the offering or the provision of services  
25 is legal advice or legal services.

26 (d) Falsely represent that the offering or the provision of  
27 services is necessary.

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1 (e) Falsely represent that the offering or the provision of  
2 services is in response to a request by or on behalf of a  
3 consumer.

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

7 (g) Fail to reveal a material fact regarding an immigration  
8 matter or regarding services, which fact could not be reasonably  
9 known to the consumer, the omission of which tends to mislead or  
10 deceive the consumer.

11 (h) Take advantage of a consumer's inability to protect his  
12 or her interests when the immigration clerical assistant knows or  
13 should reasonably know of a consumer's disability, illiteracy, or  
14 inability to understand the language of any documentation or  
15 government form.

16 (i) Regarding services not described in section 5, charge a  
17 consumer a price for services that is not reasonable under the  
18 circumstances.

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

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

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

1            [(m)] Act as an intermediary between the consumer and the  
2 federal government in an immigration matter.

3            [(n)] Make any representation orally or in writing that the  
4 immigration clerical assistant guarantees or promises a specific  
5 immigration benefit or result.

6            [(o)] Represent or imply that the immigration clerical  
7 assistant will be able to obtain any special influence over, or  
8 treatment from, any government entity with respect to an  
9 immigration matter.

10           (2) An immigration clerical assistant shall not, in any  
11 document, advertisement, stationery, letterhead, business card,  
12 or other comparable written material describing the role of the  
13 immigration clerical assistant, literally translate from English  
14 into another language terms or titles including, but not limited  
15 to, notary public, notary, licensed, attorney, lawyer, or any  
16 other term that implies that the person is an attorney. As used  
17 in this subsection, "literally translate" means the translation  
18 of a word or phrase without regard to the true meaning of the  
19 word or phrase in the language that is being translated.

20           Sec. 19. (1) An immigration clerical assistant shall  
21 deliver to each consumer a copy of each document or form  
22 completed on behalf of a consumer. Each document and form  
23 executed or completed shall include the name and business address  
24 of the immigration clerical assistant.

25           (2) An immigration clerical assistant shall retain copies of  
26 all documents and forms completed or executed on behalf of a  
27 consumer for not less than 3 years after.

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1 (3) An immigration clerical assistant shall return all  
2 original documents of the consumer and not keep them in his or  
3 her possession.

4 (4) An immigration clerical assistant shall promptly deliver  
5 to each consumer all original documents, including notices,  
6 letters, approvals, denials, receipts, or other correspondence  
7 received on behalf of the consumer in any immigration matter. As  
8 used in this subsection, "promptly" means either of the  
9 following:

10 (a) In the case of correspondence from the agency of the  
11 federal government that requires a response within 30 days after  
12 receipt, within 7 days.

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

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

16 (a) In the case of a first [conviction], a misdemeanor  
17 punishable by imprisonment for not more than 93 days or a fine of  
18 not more than \$1,000.00, or both.

19 (b) In the case of a second or subsequent [conviction], a felony  
20 punishable by imprisonment for not more than 2 years or a fine of  
21 not more than \$10,000.00, or both.

22 (2) A person injured by an immigration clerical assistant may  
23 bring an action in a court of competent jurisdiction for  
24 equitable relief or damages, or both. The court shall also grant  
25 a prevailing plaintiff reasonable attorney fees and costs.

26 (3) A person who, upon information and belief, claims a  
27 violation of this act has been committed by an immigration

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1 clerical assistant may bring an action in a court of competent  
2 jurisdiction for equitable relief on behalf of the general  
3 public. The court shall award a prevailing plaintiff reasonable  
4 attorney fees and costs.

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

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

20 (6) An immigration clerical assistant that is [acting on behalf of]  
21 a tax-exempt  
22 nonprofit organization under section 501(c)(3) of the internal  
23 revenue code of 1986 that applies to and is entered into the  
24 registry and complies with the bonding requirement of section 15  
25 and the service charge requirements of section 11, or an employee  
26 or volunteer of such an organization, is exempt from this  
27 section.

27 Sec. 23. This act takes effect October 1, 2004.