

HOUSE BILL No. 4983

July 16, 2003, Introduced by Reps. Tobocman, Minore, Condino, Bieda, Meisner, Woronchak, Huizenga, Rivet, Gielegem, Kolb, Lipsey, Kooiman, Vander Veen, Voorhees, Steil, Byrum, Farhat and Gleason and referred to the Committee on Criminal Justice.

A bill to regulate certain transactions involved in certain immigration matters; to set standards involving certain immigration matters and persons engaged in immigration matters; to provide for certain powers and duties for certain state and local agencies; to provide for the imposition of certain fees; 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) "Compensation" means money, donations, property, promise
5 of payment, or anything else of value required in exchange for a
6 person's services.

7 (b) "Consumer" means a person who utilizes or seeks to
8 utilize the services of an immigration clerical assistant.

1 (c) "Department" means the department of consumer and
2 industry services.

3 (d) "Good moral character" means that term as defined and
4 determined under 1974 PA 381, MCL 338.41 to 338.47.

5 (e) "Immigration clerical assistant" means any person
6 providing or offering to provide services relating to any
7 immigration matter. Immigration clerical assistant does not
8 include a person exempted from this act under section 7.

9 (f) "Immigration matter" means any action taken on behalf of
10 any person for the benefit of that person or another person
11 regarding immigrant, nonimmigrant, or citizenship status of any
12 person. Immigration matter includes, but is not limited to,
13 federal or state administrative and court proceedings and the
14 filing of accompanying documents in those proceedings.

15 (g) "Services" means either of the following:

16 (i) Transcribing responses on government agency forms that
17 have been requested by the consumer and is related to an
18 immigration matter without advising the consumer as to his or her
19 answers on these matters, or altering or deleting language on
20 standard forms.

21 (ii) Translating information requested on government agency
22 forms to a foreign language for the consumer's benefit and
23 translating the answers provided by the consumer into English and
24 at least 1 of the following:

25 (A) Requesting on behalf of the consumer any supporting
26 documentation that is specifically requested on the government
27 agency forms or at the request of the government agency.

1 (B) Translating documents from a foreign language into
2 English but only if the immigration clerical assistant has
3 sufficient proficiency in the foreign language.

4 (C) Notarizing signatures on government forms if the person
5 performing the services is a notary public in the state of
6 Michigan.

7 (D) Making referral without fee to an attorney capable of
8 undertaking legal representation for a person in an immigration
9 matter.

10 (E) Preparing or arranging for the preparation of photographs
11 and fingerprints which are specifically requested on the
12 government agency forms or at the request of the government
13 agency.

14 (F) Arranging for the performance of medical testing and
15 obtaining of those results that are specifically requested on the
16 government agency form or at the request of the government
17 agency.

18 (G) Conducting English language and civics courses for
19 consumers.

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

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

1 (a) An attorney at law licensed to practice law in any state
2 or territory of the United States.

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

6 (c) A reputable person of good moral character who has a
7 preexisting personal, family, or business relationship with the
8 person subject to the immigration matter and engaged in an
9 immigration matter for that person without compensation.

10 (d) An organization or individual accredited and recognized
11 by the board of immigration appeals under 8 C.F.R. 292.2.

12 Sec. 7. (1) A person and a nonprofit corporation or other
13 person exempt under section 501(c)(3) of the internal revenue
14 code of 1986 may apply for exemption from licensure under this
15 act by applying to the department in a manner approved by the
16 department and demonstrating to the satisfaction of the
17 department that the person has access to legal resources and,
18 before issuance of the exemption, that adequate training has been
19 provided in services proposed to be performed.

20 (2) An exemption under this act is valid for a period of 3
21 years or for a period of less than 3 years as designated by the
22 department. A person may renew the exemption under this section
23 by applying to the department not less than 6 months before the
24 expiration of the existing exemption. A person whose exemption
25 is not renewed may not provide the services after the expiration
26 of the exemption except that the person may provide any services
27 that have already been initiated until a substitute exempted

1 person or an immigration clerical assistant is found.

2 (3) A person exempt under this section shall not hold himself
3 or herself out to the general public as an immigration clerical
4 assistant but may hold himself or herself out to persons or
5 agencies involved in an immigration matter as a person exempted
6 under this act and allowed to provide services for an individual
7 consumer.

8 (4) Notwithstanding an exemption from the licensure
9 requirement under this section, a person or other legal entity is
10 subject to the laws and court rules governing the unauthorized
11 practice of law including, but not limited to, section 1 of 1917
12 PA 354, MCL 450.681, section 916 of the revised judicature act of
13 1961, 1961 PA 236, MCL 600.916, and rule 16 of the rules
14 concerning the state bar.

15 Sec. 9. (1) A person shall not provide services or offer to
16 provide services or act as an immigration clerical assistant
17 unless licensed under this act or exempted from licensure by the
18 department under section 7.

19 (2) A person licensed under this act as an immigration
20 clerical assistant shall only use the title "immigration clerical
21 assistant" and shall not use the term "immigration consultant",
22 "immigration specialist", or any other similar term tending to
23 connote special training or knowledge of immigration law.

24 (3) A person not licensed under this act shall not use the
25 title "immigration clerical assistant", "immigration consultant",
26 "immigration specialist", or other similar term tending to
27 connote licensure under this act or any title determined by the

1 department to provide confusion by the general public as to
2 whether the person is licensed under this act.

3 Sec. 11. (1) The department shall require a person licensed
4 as an immigration clerical assistant to file and maintain in
5 force a corporate surety or cash bond conditioned upon the
6 faithful and competent provision of services. The bond shall be
7 in a form provided by or approved by the department and be in the
8 sum of not less than \$50,000.00.

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

16 (3) The surety on the bond shall have the right to cancel or
17 terminate the bond upon giving 30 days' written notice to the
18 department and after that date shall be relieved of liability for
19 a breach of condition occurring after the effective date of the
20 cancellation or termination. The failure to give a new bond
21 within 30 days after the notice to the department under this
22 subsection operates as an automatic suspension of the immigration
23 clerical assistant's license. An action on the bond shall not be
24 commenced after the expiration of 1 year after the effective date
25 of the cancellation or termination of the bond.

26 (4) The department shall not renew a license issued under
27 this act if the department has been notified by the issuer of the

1 bond that the bond of the licensee has been canceled or
2 terminated.

3 Sec. 13. (1) The department shall issue a license as an
4 immigration clerical assistant to a person who demonstrates to
5 the satisfaction of the department that he or she meets all of
6 the following requirements:

7 (a) Is at least 18 years of age and of good moral character.

8 (b) Has the education and training prescribed by rules
9 promulgated by the department.

10 (c) Has the experience prescribed by rules promulgated by the
11 department.

12 (d) Has passed an examination prescribed by rules promulgated
13 by the department.

14 (e) Has paid an application fee of not less than \$50.00 and
15 not more than \$500.00 and a per year license fee of not less than
16 \$25.00 and not more than \$250.00. The department shall
17 promulgate rules to set application and license fees designed to
18 cover the reasonable costs to the department of the application
19 and licensure processing.

20 (2) The department may issue a license to a person not
21 fulfilling the education or examination requirements, or both, of
22 subsection (1) if it determines that the person is otherwise
23 qualified on the basis of a combination of those requirements or
24 on the basis of age and other relevant experience acceptable to
25 the department regarding immigration matters.

26 (3) The department may promulgate rules under the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, to amend or supplement the examination or education
2 requirements of this section.

3 (4) A license under this act shall be issued for a term of 3
4 years.

5 (5) Within 30 days after a change of address, a licensee or a
6 person exempted from licensure under section 7 shall notify the
7 department of the change in address. It is the responsibility of
8 the licensee or exempted person to keep the department advised of
9 a change of address. If a renewal application or other notice is
10 sent by the department to the person's last known address as
11 reflected in department's records and the application or notice
12 is not received by the person, the licensee may be subject to
13 sanctions or disciplinary action under section 23.

14 Sec. 15. (1) A licensed clerical assistant may charge the
15 following for services:

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

18 (b) Not more than \$10.00 per page to fill out a government
19 agency form.

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

21 (d) Not more than the amount for other services as provided
22 in subsection (2).

23 (2) The department may promulgate rules under the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328, to set maximum fees charged by licensees for other
26 permissible services.

27 Sec. 17. (1) An immigration clerical assistant offering to

1 provide or providing services shall enter into a written contract
2 with a client for the services to be rendered. The contract
3 shall embody all the terms and conditions of the agreement. The
4 contract shall include a description of the services to be
5 rendered and the cost of each service to be performed. The
6 consumer has 72 hours from execution of the contract to rescind
7 the contract. Any compensation rendered by the consumer must be
8 returned if cancellation occurs before the expiration of that
9 72-hour period.

10 (2) All provisions of the contract shall be written in
11 English and in the language spoken by the consumer and shall be
12 presented to the consumer 72 hours before execution. Printed on
13 the face of the contract in at least 12-point boldfaced type in
14 the language of the consumer shall be a statement that the
15 immigration clerical assistant is not an attorney and is not
16 allowed to perform legal services or offer legal advice of any
17 kind. The contract shall not contain any provision that makes a
18 guarantee or promise of immigration benefits and shall not
19 contain any provision stating or implying the immigration
20 clerical assistant may obtain special favors from or has special
21 influence with the United States immigration and naturalization
22 service or the border patrol.

23 (3) All terms of the agreement between the consumer and the
24 immigration clerical assistant shall be embodied in the written
25 contract, and the immigration clerical assistant shall not orally
26 amend or supplement the contract and shall not make any statement
27 that contradicts or is inconsistent with the terms of the written

1 contract.

2 Sec. 19. (1) An immigration clerical assistant licensed
3 under section 9 and a person exempted under section 7 shall not
4 do any of the following:

5 (a) Offer or give legal advice including, but not limited to,
6 the selection of the type of application or form to be submitted
7 to a government agency, recommend a procedure to be followed in
8 seeking a benefit under the immigration and nationality act,
9 chapter 477, 66 Stat. 163, and alter or delete language on
10 standard forms not dictated by the consumer and not translated
11 verbatim.

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

14 (c) Represent that the offering or the provision of services
15 is legal advice or legal services.

16 (d) Falsely represent that the offering or the provision of
17 services is necessary.

18 (e) Falsely represent that the offering or the provision of
19 services is in response to a request by or on behalf of a
20 consumer.

21 (f) Represent that the life, safety, or welfare of the
22 consumer and his or her family is in jeopardy if services of an
23 immigration clerical assistant are not utilized.

24 (g) Fail to reveal a material fact regarding an immigration
25 matter or regarding services, which fact could not be reasonably
26 known to the consumer, the omission of which tends to mislead or
27 deceive the consumer.

1 (h) Take advantage of a consumer's inability to protect his
2 or her interests when the immigration clerical assistant knows or
3 should reasonably know of a consumer's disability, illiteracy, or
4 inability to understand the language of any documentation or
5 government form.

6 (i) Regarding services not described in section 15, charge a
7 consumer a price for services that is grossly excessive under the
8 circumstances.

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

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

13 (l) Solicit the provision of services under circumstances
14 where the person soliciting has no prior relationship with the
15 consumer and is doing so primarily for financial gain or profit.

16 (m) Engage in any method, act, or practice that is unfair or
17 deceptive.

18 (n) Act as an intermediary between the consumer and the
19 immigration and naturalization service.

20 (2) An immigration clerical assistant shall not, in any
21 document, advertisement, stationery, letterhead, business card,
22 or other comparable written material describing the role of the
23 immigration clerical assistant, literally translate from English
24 into another language terms or titles including, but not limited
25 to, notary public, notary, licensed, attorney, lawyer, or any
26 other term that implies that the person is an attorney. As used
27 in this subsection, "literally translate" means the translation

1 of a word or phrase without regard to the true meaning of the
2 word or phrase in the language that is being translated.

3 (3) An immigration clerical assistant shall not make or allow
4 another person to make written references to compliance with the
5 bonding requirements of this act except as provided in this act.

6 Sec. 21. (1) An immigration clerical assistant shall
7 deliver to each consumer a copy of each document or form
8 completed on behalf of a consumer. Each document and form
9 executed or completed shall include the name and business address
10 of the immigration clerical assistant.

11 (2) The immigration clerical assistant shall retain copies of
12 all documents and forms completed or executed on behalf of a
13 consumer for not less than 3 years after.

14 (3) The immigration clerical assistant shall return all
15 original documents of the consumer and not keep them in his or
16 her possession.

17 Sec. 23. (1) A licensee determined by the department, after
18 notice and opportunity for a hearing under the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
20 have violated this act is subject to any of the following:

21 (a) License suspension or revocation.

22 (b) Limitation of licensed activities.

23 (c) An administrative fine of not more than \$25,000.00. In
24 assessing the administrative fine, the department shall consider
25 the impact of the violation upon the client and upon the public.

26 (2) A person who violates this act is subject to a civil fine
27 of not to exceed \$100,000.00 for each violation to be determined

1 and assessed in a civil action in a court of competent
2 jurisdiction brought by the attorney general or a local
3 prosecutor.

4 (3) A person who violates this act is guilty of the
5 following:

6 (a) In the case of a first violation, a misdemeanor
7 punishable by imprisonment for not more than 1 year or a fine of
8 not more than \$10,000.00, or both, for each consumer with respect
9 to whom a violation occurs.

10 (b) In the case of a second or subsequent violation, a felony
11 punishable by imprisonment for not more than 4 years or a fine of
12 not more than \$25,000.00, or both, for each consumer with respect
13 to whom a violation occurs.

14 (4) A person injured by a licensee may bring an action in a
15 court of competent jurisdiction for equitable relief or damages,
16 or both. Upon entrance of a judgment under this section, the
17 court shall award actual damages plus an amount equal to 3 times
18 the amount of the actual damages or \$1,000.00 per violation,
19 whichever is greater. The court shall also grant a prevailing
20 plaintiff reasonable attorney fees and costs. The court may
21 award exemplary damages, to be awarded to the state bar of
22 Michigan bar foundation fund.

23 (5) A person who, upon information and belief, claims a
24 violation of this act has been committed by an immigration
25 clerical assistant may bring an action in a court of competent
26 jurisdiction for equitable relief on behalf of the general
27 public. The court shall award a prevailing plaintiff reasonable

1 attorney fees and costs as well as appropriate exemplary
2 damages.

3 (6) Except in a class action, a person suffering a loss as a
4 result of a violation of this act may bring an action in a court
5 of competent jurisdiction to recover actual damages or \$250.00,
6 whichever is greater, together with reasonable attorney fees.

7 (7) The remedies and penalties in this act are cumulative and
8 use of 1 remedy under this act does not bar the use of any other
9 remedy allowed under law.

10 Sec. 25. The department may promulgate rules under the
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
12 24.328, to enforce and administer this act.

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