

Legislative Analysis



REPEAL IMMIGRATION CLERICAL ASSISTANT LIST AND BOND REQUIREMENT

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House Bill 4528 (as reported without amendment)

Sponsor: Rep. Klint Kesto

(Enrolled as Public Act 174 of 2014)

Committee: Regulatory Reform

First Analysis (5-1-13)

BRIEF SUMMARY: The bill would eliminate the immigration clerical assistant list and the requirement that immigration clerical assistants maintain a \$50,000 corporate surety or cash bond. Under the Immigration and Clerical Assistant Act, individuals are prohibited from providing or offering to provide services, or acting as an immigration clerical assistant, without being on the immigration clerical assistant list established within the Department of Licensing and Regulatory Affairs (LARA).

FISCAL IMPACT: House Bill 4528 would not have a significant fiscal impact on the Corporations, Securities, and Commercial Licensing Bureau (CSCLB) within the Department of Licensing and Regulatory Affairs (LARA). See *Fiscal Information* below for a detailed explanation.

THE APPARENT PROBLEM:

Under the Immigration Clerical Assistant Act, individuals are prohibited from providing or offering to provide services, or acting as an immigration clerical assistant, without being on LARA's immigration clerical assistant list. Enacted as Public Act 161 of 2004, the act sought to regulate individuals that were providing non-legal immigration services. In some instances, immigrants were being charged high rates for help with completing documents only to have nothing done on their behalf. In order to provide protection to vulnerable consumers, PA 161 required individuals offering immigration services to be placed on a state list, required compliance with advertising and contract language, required a bond be posted before an individual began operating, and provided for criminal and civil penalties for violators.

Executive Order 2011-5 created the Office of Regulatory Reinvention (ORR) and tasked it with "creating a regulatory environment and regulatory processes that are fair, efficient, and conducive to business growth and job creation through its oversight and review of current rules and regulations and proposed rulemaking and regulatory activities by all departments and agencies."

To fulfill its obligation, the ORR established Advisory Rules Committees (ARC) to review statutes and promulgated rules affecting specific areas. The Occupational Licensing ARC was formed to make recommendations to the ORR regarding potential changes to Michigan's existing occupational regulations. The ARC recommendations were based on the following seven factors contained within Executive Order 2011-5:

1. Health or safety benefits of the rules.
2. Whether the rules are mandated by any applicable constitutional or statutory provision.
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements, and other factors.
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government.
5. Extent to which the regulations exceed national or regional compliance requirements or other standards.
6. Date of last evaluation of the rules and the degree, if any, to which technology, economic conditions, or their factors have changed regulatory activity covered by the rules since the last evaluation.
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

The ORR issued its final recommendations on occupational licensing on February 17, 2012, and among other things, recommended the deregulation of several occupations, including immigration clerical assistants. While the bill would not completely deregulate the profession, it would eliminate the immigration clerical assistant list and the requirement that immigration clerical assistants maintain a \$50,000 corporate surety or cash bond.

According to testimony, the immigration clerical assistant list maintained by LARA currently contains seven individuals. Due to the low participation, the bill proposes eliminating the list. However, the bill would retain the civil and criminal penalties currently in the act, thus maintaining the original intent of PA 161.

THE CONTENT OF THE BILL:

The bill would repeal the following sections of the Immigration Clerical Assistant Act:

- Section 4, which prohibits anyone from providing or offering to provide services, or acting as an immigration clerical assistant, unless the individual has been placed on the immigration clerical assistant list established within the Department of Licensing and Regulatory Affairs.
- Section 7, which requires immigration clerical assistants to apply for placement on the list created under Section 9 and sets forth the minimum application criteria.
- Section 9, which creates an immigration clerical assistant list within LARA and establishes accompanying fees.
- Section 15, which requires immigration clerical assistants to file and maintain a corporate surety or cash bond of at least \$50,000. The bond is intended for the benefit of a person that is damaged by fraud, misstatement, misrepresentation, or

other failure of an immigration clerical assistant or representative to provide promised services.

Currently, the act allows for a person injured by an immigration clerical assistant to bring court action for equitable relief and/or damages. In an action for damages, the bill would require the court to award a prevailing plaintiff the amount of actual damages, or three times the actual damages if the court finds an immigration clerical assistant committed a willful violation of the act.

MCL 338.3453 et al.

BACKGROUND INFORMATION:

For the full text of the ORR's recommendations on occupational licensing, see:

http://www.michigan.gov/documents/lara/ORR_Occupational_Licensing_Recommendations_382437_7.pdf

FISCAL INFORMATION:

House Bill 4528 would not have a significant fiscal impact on the Corporations, Securities, and Commercial Licensing Bureau (CSCLB) within the Department of Licensing and Regulatory Affairs (LARA).

As of FY 2012, there were seven (7) individuals listed by the CSCLB as immigration clerical assistants and over the past six fiscal years, the CSCLB has not made any *direct* expenditures to administer the list required by 2004 PA 161. Direct expenditures comprise relatively variable salary, supply, and supplementary costs directly attributable to activities performed by CSCLB staff, whereas *total* expenditures include relatively fixed overhead costs such as departmental administration, property management and rent, information technology services, and Attorney General legal services. As evidenced by the table to the right, total expenditures substantially exceed the nominal revenue collected from immigration clerical assistants. Yet, the overhead costs that constitute total expenditures are relatively fixed and, if the listing requirements of 2004 PA 161 are eliminated by House Bill 4528, would be reallocated amongst other occupational regulatory programs under the CSCLB.

Immigration Clerical Assistants			
Fiscal Year	Revenue	Expenditures	
		Direct	Total
2007	\$500	\$0	\$122,413
2008	\$250	\$0	\$74,551
2009	\$950	\$0	\$108,390
2010	\$0	\$0	\$126,508
2011	\$0	\$0	\$129,225
2012	\$40	\$0	\$63,974
Total	\$1,740	\$0	\$625,061
Average	\$290	\$0	\$104,177
Avg per Lic	\$41	\$0	\$14,882

It should be noted, however, that if the Legislature eliminates multiple occupation regulatory programs under the CSCLB that do not generate adequate revenues (generally

those programs with few licensees), overhead costs would be expected to decrease by an indeterminate amount once a sufficient number are eliminated thereby reducing total expenditures.

ARGUMENTS:

For:

The immigration clerical assistant list has experienced low participation, with only seven individuals currently registered. Some believe that regulations with such a low participation level are not an efficient use of government resources. As a result, the bill would eliminate the immigration clerical assistant list and, subsequently, LARA's oversight responsibilities. However, the bill would still maintain criminal and civil penalties for individuals found in violation of the act, thus protecting consumers from fraudulent and deceptive practices.

Against:

There was no opposition at the committee level.

POSITIONS:

The Michigan Department of Licensing and Regulatory Affairs supports the bill. (4-23-13)

The Michigan Department of Civil Rights supports the bill. (4-16-13)

The Michigan Catholic Conference supports the bill. (4-16-13)

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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.