

HOUSE BILL No. 4528

April 10, 2013, Introduced by Reps. Kesto, Tlaib, Crawford, McCready, Cavanagh, Zemke, Hovey-Wright, Lauwers and McBroom and referred to the Committee on Regulatory Reform.

A bill to amend 2004 PA 161, entitled
"Michigan immigration clerical assistant act,"
by amending the title and sections 3, 13, 17, and 21 (MCL 338.3453,
338.3463, 338.3467, and 338.3471); and to repeal acts and parts of
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act 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~~

1 provide for remedies and penalties.

2 Sec. 3. As used in this act:

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

5 (i) An individual ~~serving~~**WHO SERVES** as a designated school
6 official or principal designated school official as defined by the
7 United States citizenship and immigration services, but only ~~where~~
8 **WHEN** acting within the scope of authority in that capacity on
9 behalf of the designated educational institution.

10 (ii) An individual ~~serving~~**WHO SERVES** as a responsible officer
11 or alternate responsible officer as defined by the United States
12 department of state, but only ~~where~~**WHEN** acting within the scope of
13 authority in that capacity on behalf of the designated exchange
14 visitor program.

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

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

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

1 (c) "Consumer" means ~~a person~~ **AN INDIVIDUAL** who utilizes or
2 seeks to utilize the services of an immigration clerical assistant.

3 ~~(d) "Department" means the department of labor and economic~~
4 ~~growth.~~

5 (D) ~~(e)~~ "Immigration clerical assistant" means any individual
6 ~~providing or offering~~ **WHO PROVIDES OR OFFERS** to provide services,
7 for compensation, relating to any immigration matter.

8 (E) ~~(f)~~ "Immigration matter" means any matter affecting the
9 immigrant status, nonimmigrant status, or citizenship status of any
10 individual and includes, but is not limited to, federal or state
11 administrative or court proceedings or the filing of accompanying
12 documents in those proceedings, or both.

13 ~~(g) "List" means the list of immigration clerical assistants~~
14 ~~established by the department.~~

15 (F) ~~(h)~~ "Services" means any action taken on behalf of any
16 consumer for the benefit of that consumer or another individual
17 regarding the immigrant status, nonimmigrant status, or citizenship
18 status of any consumer or other individual, and includes, but is
19 not limited to, the following:

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

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

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

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

1 (G) ~~(i)~~ "Solicit" means any contact with a specific consumer
 2 by an immigration clerical assistant or his or her agent,
 3 representative, or employee ~~regarding the provision of~~ **ABOUT**
 4 **PROVIDING** services, for compensation, regarding an immigration
 5 matter. ~~or the provision of services.~~ Solicit does not include
 6 letters or advertising distributed generally to persons **THAT ARE**
 7 not known to need the services of an immigration clerical
 8 assistant.

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

12 (2) ~~The~~ **A** contract **DESCRIBED IN SUBSECTION (1)** shall be
 13 written in English and shall include a written translation into the
 14 primary language understood by the consumer if the consumer is not
 15 a native speaker of English. The contract shall embody all the
 16 terms and conditions of the agreement to provide services,
 17 including, but not limited to, the following:

18 (a) The name and address of the immigration clerical
 19 assistant.

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

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

23 ~~—— (d) The name and address of the bonding company or other~~
 24 ~~surety that has issued the bond required under section 15.~~

25 (3) An immigration clerical assistant shall not orally amend
 26 or supplement ~~the~~ **A** written contract **DESCRIBED IN SUBSECTION (1)**
 27 and shall not make any statement that contradicts or is

1 inconsistent with the terms of the written contract. A copy of the
2 executed contract shall be provided to the consumer at the time of
3 execution.

4 (4) ~~The-A~~ consumer has 72 hours from the execution of ~~the-A~~
5 contract **DESCRIBED IN SUBSECTION (1)** to rescind the transaction. A
6 notice of the consumer's right to rescind shall be included in the
7 contract in English and shall be translated with substantially
8 similar meaning into the primary language understood by the
9 consumer in substantially the following form:

10 "You, the consumer, may cancel this transaction at any time
11 prior to 72 hours following the date and time that this contract is
12 signed by you. You may cancel this transaction, without any penalty
13 or obligation, by writing "CANCEL" across your signature and
14 returning a copy to the immigration clerical assistant or his/her
15 authorized representative.".

16 (5) ~~Upon rescission of the transaction, an~~ **IF A TRANSACTION IS**
17 **RESCINDED UNDER SUBSECTION (4), THE** immigration clerical assistant
18 shall promptly return to the person ~~so~~ entitled to **RECEIVE** it any
19 deposit, down payment, or other compensation received from or on
20 behalf of the consumer and shall return to the consumer, or the
21 individual upon whose behalf the consumer is acting, all original
22 documents, including notices, letters, approvals, denials,
23 receipts, or other correspondence received on behalf of the
24 consumer in any immigration matter.

25 (6) ~~The-A~~ contract **DESCRIBED IN SUBSECTION (1)** shall state in
26 a prominent place, in type not smaller than 12-point font, a notice
27 in English that ~~shall be~~ **IS** translated with substantially similar

1 meaning into the primary language understood by the consumer, as
 2 follows:

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

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

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

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

16 (c) Represent that ~~the offering or the provision of services~~
 17 ~~is~~ **HE OR SHE OFFERS OR PROVIDES ARE** legal advice or legal services.

18 (d) Falsely represent that ~~the offering or the provision of~~
 19 ~~services is~~ **HE OR SHE OFFERS OR PROVIDES ARE** necessary.

20 (e) Falsely represent that ~~the offering or the provision of~~
 21 ~~services is~~ **HE OR SHE OFFERS OR PROVIDES ARE** in response to a
 22 request by or on behalf of a consumer.

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

26 (g) Fail to reveal a material fact regarding an immigration
 27 matter or regarding services ~~, which fact~~ **THAT** could not be

1 reasonably known to the consumer, the omission of which tends to
2 mislead or deceive the consumer.

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

8 (i) Regarding services not described in section 11, charge a
9 consumer a price for services that is not reasonable under the
10 circumstances.

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

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

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

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

19 (n) Make any representation orally or in writing that ~~the~~
20 ~~immigration clerical assistant~~ **HE OR SHE** guarantees or promises a
21 specific immigration benefit or result.

22 (o) Represent or imply that ~~the immigration clerical assistant~~
23 **HE OR SHE** will be able to obtain any special influence over, or
24 treatment from, any government entity with respect to an
25 immigration matter.

26 ~~—— (p) Make a false statement or representation to the department~~
27 ~~as part of the application process for initial or renewal placement~~

1 ~~on the list.~~

2 (P) ~~(q)~~ Use a term implying that ~~the individual placed on the~~
3 ~~list~~ **HE OR SHE** is approved, certified, or licensed by the state of
4 Michigan or the federal government.

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

15 Sec. 21. (1) A person ~~who~~ **THAT** violates this act is guilty of
16 the following:

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

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

23 (2) A person **THAT IS** injured by **A VIOLATION OF THIS ACT BY** an
24 immigration clerical assistant may bring an action in a court of
25 competent jurisdiction for equitable relief or damages, or both. **IN**
26 **AN ACTION FOR DAMAGES, THE COURT SHALL AWARD A PREVAILING PLAINTIFF**
27 **THE AMOUNT OF ACTUAL DAMAGES, OR, IF THE COURT FINDS THAT THE**

1 VIOLATION WAS WILLFUL, 3 TIMES THE PLAINTIFF'S ACTUAL DAMAGES. The
2 court shall also grant a prevailing plaintiff reasonable attorney
3 fees and costs. ~~and may order removal from the list for at least 5~~
4 ~~years or as otherwise ordered by the court.~~

5 (3) A person ~~who, upon~~ **THAT, ON** information and belief, claims
6 a violation of this act has been committed by an immigration
7 clerical assistant may bring an action in a court of competent
8 jurisdiction for equitable relief on behalf of the general public.
9 The court shall award a prevailing plaintiff reasonable attorney
10 fees and costs. ~~and may order removal from the list for at least 5~~
11 ~~years or as otherwise ordered by the court.~~

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

17 ~~—— (5) Notwithstanding any other provision of this section, a~~
18 ~~first violation of the list requirement of section 7 or bonding~~
19 ~~requirement of section 15, or both, shall subject the immigration~~
20 ~~clerical assistant only to a notice of noncompliance issued by the~~
21 ~~department. The department shall issue the notice of noncompliance~~
22 ~~promptly, and the notice of noncompliance shall indicate a time~~
23 ~~period for compliance not to exceed 90 days. A second or subsequent~~
24 ~~violation of either or both of the requirements described in this~~
25 ~~subsection shall subject a person to the other provisions of this~~
26 ~~section.~~

27 ~~—— (6) Upon notification of any kind to the department of an~~

~~individual acting as an immigration clerical assistant without being placed on the list, failure to comply with the list requirements, or of the failure to be in compliance with the bonding requirement imposed under section 15, the department shall issue a notice of noncompliance to that individual.~~

~~———— (7) As a precondition to the prosecution of an individual under subsection (1) for failure of an individual acting as an immigration clerical assistant to be placed on the list, failure to comply with the list requirements, or for failure to comply with the bonding requirement under section 15, the complainant shall demonstrate that the department had sent a notice of noncompliance to the person alleged to have violated this act.~~

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

Enacting section 1. Sections 4, 7, 9, and 15 of the Michigan immigration clerical assistant act, 2004 PA 161, MCL 338.3454, 338.3457, 338.3459, and 338.3465, are repealed.