

MICHIGAN IMMIGRATION CLERICAL ASSISTANT ACT

Act 161 of 2004

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; and to provide for remedies and penalties.

History: 2004, Act 161, Eff. Oct. 1, 2004;—Am. 2014, Act 174, Imd. Eff. June 17, 2014.

The People of the State of Michigan enact:

338.3451 Short title.

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

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3453 Definitions.

Sec. 3. As used in this act:

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

(i) An individual who serves as a designated school official or principal designated school official as defined by the United States citizenship and immigration services, but only when acting within the scope of authority in that capacity on behalf of the designated educational institution.

(ii) An individual who serves as a responsible officer or alternate responsible officer as defined by the United States department of state, but only when acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.

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

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

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

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

(d) "Immigration clerical assistant" means any individual who provides or offers to provide services, for compensation, relating to any immigration matter.

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

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

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

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

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

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

(g) "Solicit" means any contact with a specific consumer by an immigration clerical assistant or his or her agent, representative, or employee about providing services, for compensation, regarding an immigration matter. Solicit does not include letters or advertising distributed generally to persons that are not known to need the services of an immigration clerical assistant.

History: 2004, Act 161, Eff. Oct. 1, 2004;—Am. 2014, Act 174, Imd. Eff. June 17, 2014.

338.3454 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.

Compiler's note: The repealed section pertained to list of individuals providing immigration services.

338.3455 Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Conducting educational or experiential evaluations, or combinations of educational and experiential evaluations, for 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.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3457 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.

Compiler's note: The repealed section pertained to immigration clerical assistant placement on list.

338.3459 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.

Compiler's note: The repealed section pertained to creation of immigration clerical assistant list.

338.3461 Charge for services.

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

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

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

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

(d) A reasonable and fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3463 Contract requirements.

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

(2) A contract described in subsection (1) shall be written in English and shall include a written translation into the primary language understood by the consumer if the consumer is not a native speaker of English. The contract shall embody all the terms and conditions of the agreement to provide services, including, but not limited to, the following:

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

(b) The date and time of the transaction.

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

(3) An immigration clerical assistant shall not orally amend or supplement a written contract described in subsection (1) and shall not make any statement that contradicts or is inconsistent with the terms of the written contract. A copy of the executed contract shall be provided to the consumer at the time of execution.

(4) A consumer has 72 hours from the execution of a contract described in subsection (1) to rescind the transaction. A notice of the consumer's right to rescind shall be included in the contract in English and shall be translated with substantially similar meaning into the primary language understood by the consumer in substantially the following form:

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

(5) If a transaction is rescinded under subsection (4), the immigration clerical assistant shall promptly return to the person entitled to receive it any deposit, down payment, or other compensation received from or on behalf of the consumer and shall return to the consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter.

(6) A contract described in subsection (1) shall state in a prominent place, in type not smaller than 12-point font, a notice in English that is translated with substantially similar meaning into the primary language understood by the consumer, as follows:

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

History: 2004, Act 161, Imd. Eff. Oct. 1, 2004;—Am. 2014, Act 174, Imd. Eff. June 17, 2014.

338.3465 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.

Compiler's note: The repealed section pertained to corporate surety or cash bond.

338.3467 Prohibited conduct.

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

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

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

(c) Represent that services he or she offers or provides are legal advice or legal services.

(d) Falsely represent that services he or she offers or provides are necessary.

(e) Falsely represent that services he or she offers or provides are in response to a request by or on behalf of a consumer.

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

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

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

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

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

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

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

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

(n) Make any representation orally or in writing that he or she guarantees or promises a specific immigration benefit or result.

(o) Represent or imply that he or she will be able to obtain any special influence over, or treatment from, any government entity with respect to an immigration matter.

(p) Use a term implying that he or she is approved, certified, or licensed by the state of Michigan or the federal government.

(2) An immigration clerical assistant shall not, in any document, advertisement, stationery, letterhead,

business card, or other comparable written material describing the role of the immigration clerical assistant, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies that the person is an attorney. As used in this subsection, "literally translate" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

History: 2004, Act 161, Eff. Oct. 1, 2004;—Am. 2014, Act 174, Imd. Eff. June 17, 2014.

338.3469 Delivery of documents and forms.

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

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

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

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

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

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

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3471 Violations; penalties; exemption.

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

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

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

(2) A person that is injured by a violation of this act by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief or damages, or both. In an action for damages, the court shall award a prevailing plaintiff the amount of actual damages, or, if the court finds that the violation was willful, 3 times the plaintiff's actual damages. The court shall also grant a prevailing plaintiff reasonable attorney fees and costs.

(3) A person that, on information and belief, claims a violation of this act has been committed by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief on behalf of the general public. The court shall award a prevailing plaintiff reasonable attorney fees and costs.

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

(5) 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 complies with the service charge requirements of section 11, or an employee or volunteer of such an organization, is exempt from this section.

History: 2004, Act 161, Eff. Oct. 1, 2004;—Am. 2014, Act 174, Imd. Eff. June 17, 2014.