



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Rosemary Mulligan

SYNOPSIS AS INTRODUCED:

815 ILCS 505/2AA

Amends the Consumer Fraud and Deceptive Business Practices Act. Makes a technical change in a Section concerning immigration services.

LRB093 16304 RXD 41942 b

1 AN ACT concerning business transactions.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 2AA as follows:

6 (815 ILCS 505/2AA)

7 Sec. 2AA. Immigration services.

8 (a) "Immigration matter" means any proceeding, filing, or
9 action affecting the nonimmigrant, immigrant or citizenship
10 status of any person that arises under immigration and
11 naturalization law, executive order or presidential
12 proclamation of the United States or any foreign country, or
13 that arises under action of the United States Immigration and
14 Naturalization Service, the United States Department of Labor,
15 or the United States Department of State.

16 "Immigration assistance service" means any advice,
17 guidance, information, or action provided or offered to
18 customers or prospective customers relating to any immigration
19 matter.

20 "Compensation" means money, property, services, promise of
21 payment, or anything else of value.

22 "Employed by" means that a person is on the payroll of the
23 employer and the employer deducts from the employee's paycheck
24 social security and withholding taxes, or receives
25 compensation from the employer on a commission basis or as an
26 independent contractor.

27 "Reasonable costs" means actual costs or, if actual costs
28 cannot be calculated, reasonably estimated costs of such things
29 as photocopying, telephone calls, document requests, and
30 filing fees for immigration forms, and other nominal costs
31 incidental to assistance in an immigration matter.

32 (a-1) The General Assembly finds and declares that private

1 individuals who assist persons with immigration matters have a
2 significant impact on the ability of their clients to reside
3 and work within the United States and to establish and maintain
4 stable families and business relationships. The General
5 Assembly further finds that this ~~that~~ assistance and its impact
6 also have a significant effect on the cultural, social, and
7 economic life of the State of Illinois and thereby
8 substantially affect the public interest. It is the intent of
9 the General Assembly to establish rules of practice and conduct
10 for those individuals to promote honesty and fair dealing with
11 residents and to preserve public confidence.

12 (a-5) The following persons are exempt from this Section,
13 provided they prove the exemption by a preponderance of the
14 evidence:

15 (1) An attorney licensed to practice law in any state
16 or territory of the United States, or of any foreign
17 country when authorized by the Illinois Supreme Court, to
18 the extent the attorney renders immigration assistance
19 service in the course of his or her practice as an
20 attorney.

21 (2) A legal intern, as described by the rules of the
22 Illinois Supreme Court, employed by and under the direct
23 supervision of a licensed attorney and rendering
24 immigration assistance service in the course of the
25 intern's employment.

26 (3) A not-for-profit organization recognized by the
27 Board of Immigration Appeals under 8 C.F.R. 292.2(a) and
28 employees of those organizations accredited under 8 C.F.R.
29 292.2(d).

30 (4) Any organization employing or desiring to employ an
31 alien or nonimmigrant alien, where the organization, its
32 employees or its agents provide advice or assistance in
33 immigration matters to alien or nonimmigrant alien
34 employees or potential employees without compensation from
35 the individuals to whom such advice or assistance is
36 provided.

1 Nothing in this Section shall regulate any business to the
2 extent that such regulation is prohibited or preempted by State
3 or federal law.

4 All other persons providing or offering to provide
5 immigration assistance service shall be subject to this
6 Section.

7 (b) Any person who provides or offers to provide
8 immigration assistance service may perform only the following
9 services:

10 (1) Completing a government agency form, requested by
11 the customer and appropriate to the customer's needs, only
12 if the completion of that form does not involve a legal
13 judgment for that particular matter.

14 (2) Transcribing responses to a government agency form
15 which is related to an immigration matter, but not advising
16 a customer as to his or her answers on those forms.

17 (3) Translating information on forms to a customer and
18 translating the customer's answers to questions posed on
19 those forms.

20 (4) Securing for the customer supporting documents
21 currently in existence, such as birth and marriage
22 certificates, which may be needed to be submitted with
23 government agency forms.

24 (5) Translating documents from a foreign language into
25 English.

26 (6) Notarizing signatures on government agency forms,
27 if the person performing the service is a notary public of
28 the State of Illinois.

29 (7) Making referrals, without fee, to attorneys who
30 could undertake legal representation for a person in an
31 immigration matter.

32 (8) Preparing or arranging for the preparation of
33 photographs and fingerprints.

34 (9) Arranging for the performance of medical testing
35 (including X-rays and AIDS tests) and the obtaining of
36 reports of such test results.

1 (10) Conducting English language and civics courses.

2 (11) Other services that the Attorney General
3 determines by rule may be appropriately performed by such
4 persons in light of the purposes of this Section.

5 The Attorney General may promulgate rules establishing
6 maximum fees that may be charged for the services described in
7 this subsection. The maximum fees must be reasonable in light
8 of the costs of providing those services and the degree of
9 professional skill required to provide the services.

10 No person subject to this Act shall charge fees directly or
11 indirectly for referring an individual to an attorney or for
12 any immigration matter not authorized by this Article, provided
13 that a person may charge a fee for notarizing documents as
14 permitted by the Illinois Notary Public Act.

15 (c) Any person performing such services shall register with
16 the Illinois Attorney General and submit verification of
17 malpractice insurance or of a surety bond.

18 (d) Except as provided otherwise in this subsection, before
19 providing any assistance in an immigration matter a person
20 shall provide the customer with a written contract that
21 includes the following:

22 (1) An explanation of the services to be performed.

23 (2) Identification of all compensation and costs to be
24 charged to the customer for the services to be performed.

25 (3) A statement that documents submitted in support of
26 an application for nonimmigrant, immigrant, or
27 naturalization status may not be retained by the person for
28 any purpose, including payment of compensation or costs.

29 This subsection does not apply to a not-for-profit
30 organization that provides advice or assistance in immigration
31 matters to clients without charge beyond a reasonable fee to
32 reimburse the organization's or clinic's reasonable costs
33 relating to providing immigration services to that client.

34 (e) Any person who provides or offers immigration
35 assistance service and is not exempted from this Section, shall
36 post signs at his or her place of business, setting forth

1 information in English and in every other language in which the
2 person provides or offers to provide immigration assistance
3 service. Each language shall be on a separate sign. Signs shall
4 be posted in a location where the signs will be visible to
5 customers. Each sign shall be at least 11 inches by 17 inches,
6 and shall contain the following:

7 (1) The statement "I AM NOT AN ATTORNEY LICENSED TO
8 PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES
9 FOR LEGAL ADVICE."

10 (2) The statement "I AM NOT ACCREDITED TO REPRESENT YOU
11 BEFORE THE UNITED STATES IMMIGRATION AND NATURALIZATION
12 SERVICE AND THE IMMIGRATION BOARD OF APPEALS."

13 (3) The fee schedule.

14 (4) The statement that "You may cancel any contract
15 within 3 working days and get your money back for services
16 not performed."

17 (5) Additional information the Attorney General may
18 require by rule.

19 Every person engaged in immigration assistance service who
20 is not an attorney who advertises immigration assistance
21 service in a language other than English, whether by radio,
22 television, signs, pamphlets, newspapers, or other written
23 communication, with the exception of a single desk plaque,
24 shall post or otherwise include with such advertisement a
25 notice in English and the language in which the advertisement
26 appears. This notice shall be of a conspicuous size, if in
27 writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO
28 PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR
29 LEGAL ADVICE." If such advertisement is by radio or television,
30 the statement may be modified but must include substantially
31 the same message.

32 Literal translation of the word "licensed" into a language
33 other than English is prohibited. For the purposes of this
34 Section, "literal translation" of a word or phrase from one
35 language to another means the translation of a word or phrase
36 without regard to the true meaning of the word or phrase in the

1 language which is being translated.

2 (f) The written contract shall be in both English and in
3 the language of the customer.

4 (g) A copy of the contract shall be provided to the
5 customer upon the customer's execution of the contract.

6 (h) A customer has the right to rescind a contract within
7 72 hours after his or her signing of the contract.

8 (i) Any documents identified in paragraph (3) of subsection
9 (c) shall be returned upon demand of the customer.

10 (j) No person engaged in providing immigration services
11 shall do any of the following:

12 (1) Make any statement that the person can or will
13 obtain special favors from or has special influence with
14 the United States Immigration and Naturalization Service
15 or any other government agency.

16 (2) Retain any compensation for service not performed.

17 (3) Refuse to return documents supplied by, prepared on
18 behalf of, or paid for by the customer upon the request of
19 the customer. These documents must be returned upon request
20 even if there is a fee dispute between the immigration
21 assistant and the customer.

22 (4) Represent or advertise, in connection with the
23 provision assistance in immigration matters, other titles
24 of credentials, including but not limited to "notary
25 public" or "immigration consultant," that could cause a
26 customer to believe that the person possesses special
27 professional skills or is authorized to provide advice on
28 an immigration matter; provided that a notary public
29 appointed by the Illinois Secretary of State may use the
30 term "notary public" if the use is accompanied by the
31 statement that the person is not an attorney;

32 (5) Give any legal advice concerning an immigration
33 matter.

34 (6) Make any misrepresentation of false statement,
35 directly or indirectly, to influence, persuade, or induce
36 patronage.

1 (k) (Blank)

2 (l) (Blank)

3 (m) Any person who violates any provision of this Section,
4 or the rules and regulations issued under this Section, shall
5 be guilty of a Class A misdemeanor for a first offense and a
6 Class 3 felony for a second or subsequent offense committed
7 within 5 years of a previous conviction for the same offense.

8 Upon his or her own information or upon the complaint of
9 any person, the Attorney General or any State's Attorney, or a
10 municipality with a population of more than 1,000,000, may
11 maintain an action for injunctive relief and also seek a civil
12 penalty not exceeding \$50,000 in the circuit court against any
13 person who violates any provision of this Section. These
14 remedies are in addition to, and not in substitution for, other
15 available remedies.

16 If the Attorney General or any State's Attorney or a
17 municipality with a population of more than 1,000,000 fails to
18 bring an action as provided under this Section any person may
19 file a civil action to enforce the provisions of this Article
20 and maintain an action for injunctive relief or for such
21 additional relief as may be appropriate to deter, prevent, or
22 compensate for the violation. In order to deter violations of
23 this Section, courts shall not require a showing of the
24 traditional elements for equitable relief. A prevailing
25 plaintiff may be awarded punitive damages, attorney's fees, and
26 costs of bringing an action under this Section. It is the
27 express intention of the General Assembly that remedies for
28 violation of this Section be cumulative.

29 (n) No unit of local government, including any home rule
30 unit, shall have the authority to regulate immigration
31 assistance services unless such regulations are at least as
32 stringent as those contained in this amendatory Act of 1992. It
33 is declared to be the law of this State, pursuant to paragraph
34 (i) of Section 6 of Article VII of the Illinois Constitution of
35 1970, that this amendatory Act of 1992 is a limitation on the
36 authority of a home rule unit to exercise powers concurrently

1 with the State. The limitations of this Section do not apply to
2 a home rule unit that has, prior to the effective date of this
3 amendatory Act, adopted an ordinance regulating immigration
4 assistance services.

5 (o) This Section is severable under Section 1.31 of the
6 Statute on Statutes.

7 (p) The Attorney General shall issue rules not inconsistent
8 with this Section for the implementation, administration, and
9 enforcement of this Section by January 1, 1995. The rules may
10 provide for the following:

11 (1) The content, print size, and print style of the
12 signs required under subsection (e). Print sizes and styles
13 may vary from language to language.

14 (2) Standard forms for use in the administration of
15 this Section.

16 (3) Any additional requirements deemed necessary.

17 (Source: P.A. 87-1211; 88-45; 88-644, eff. 9-9-94.)