

1881

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the Immigration Provider Enforced Disclosure Information and Registration (IMPEDIR) Act of 2011

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "Immigration Provider Enforced Disclosure Information and Registration (IMPEDIR) Act of 2011".

2 S 2. The general business law is amended by adding a new section 460-k to read as follows:

3 S 460-K. CERTIFICATE OF REGISTRATION. 1. THE DEPARTMENT OF STATE SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, ISSUE CERTIFICATES OF REGISTRATION WHICH SHALL BE VALID, UNLESS EARLIER REVOKED OR SUSPENDED, FOR A PERIOD OF TWO YEARS, TO PROVIDERS AND, UPON APPLICATION, ISSUE RENEWAL CERTIFICATES OF REGISTRATION EVERY TWO YEARS. THE SECRETARY OF STATE SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE GOVERNING THE FILING AND MAINTENANCE OF SURETY BONDS AND APPLICATIONS FOR REGISTRATION AND/OR RENEWAL.

4 2. ANY PERSON INTENDING TO ENGAGE, AS AN IMMIGRANT ASSISTANCE SERVICE PROVIDER, IN ANY ONE OR MORE OF THE ACTIVITIES SET FORTH IN THIS ARTICLE SHALL FILE WITH THE DEPARTMENT OF STATE A WRITTEN APPLICATION AND DISCLOSURE, ON FORMS TO BE PROVIDED BY THE DEPARTMENT OF STATE, CONTAINING SUCH INFORMATION AND DOCUMENTATION TO BE RETAINED BY THE SECRETARY OF STATE AS THE SECRETARY OF STATE MAY REQUIRE BY RULE OR REGULATION, INCLUDING BUT NOT LIMITED TO: (A) THE NAME, DATE OF BIRTH, RESIDENCE ADDRESS, BUSINESS ADDRESS, RESIDENCE TELEPHONE NUMBER, AND BUSINESS TELEPHONE NUMBER OF SUCH PERSON; (B) THE NAME AND ADDRESS OF SUCH PERSON'S AGENT FOR SERVICE OF PROCESS IF ONE IS REQUIRED OR HAS BEEN APPOINTED AND, IF APPLICABLE, THE NAME, BUSINESS ADDRESS, BUSINESS TELE-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05824-01-1

PHONE AND AGENT FOR SERVICE OF PROCESS OF THE CORPORATION OR PARTNERSHIP EMPLOYING SUCH PERSON; (C) A RECORD OF ANY PRIOR CONVICTIONS FOR ANY CRIME COMMITTED IN THIS STATE OR ANY OTHER JURISDICTION. THE SECRETARY OF STATE SHALL DEVELOP THE DISCLOSURE FORM REQUIRED TO FILE AN APPLICATION AND BOND PURSUANT TO THIS SECTION AND SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

3. THE SECRETARY OF STATE SHALL CHARGE AND COLLECT A REASONABLE FILING FEE AT THE TIME OF APPLICATION AND/OR RENEWAL TO COVER THE COST OF FILING THE BOND REQUIRED BY SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

4. THE DEPARTMENT OF STATE SHALL MAKE PUBLIC ON ITS WEBSITE UPDATED AT LEAST MONTHLY, AND SHALL MAKE AVAILABLE IN RESPONSE TO THE REQUEST OF ANY CUSTOMER, A LIST OF PROVIDERS WHO ARE REGISTERED PURSUANT TO THIS ARTICLE. EACH PROVIDER SHALL CONSPICUOUSLY POST ITS CERTIFICATE OF REGISTRATION AT ITS PLACE OF BUSINESS.

5. IMMIGRANT ASSISTANCE SERVICE PROVIDERS WHO HAVE REGISTERED MUST INFORM THE SECRETARY OF STATE OF ANY CHANGES IN THEIR NAME, ADDRESSES, OR TELEPHONE NUMBERS WITHIN THIRTY DAYS OF SUCH CHANGE.

6. THE SECRETARY OF STATE SHALL ESTABLISH A PROCEDURE FOR FILING COMPLAINTS AND INVESTIGATING THE COMPLAINT ON BEHALF OF AN INJURED PARTY OR ANY OTHER PARTY WHO, UPON INFORMATION AND BELIEF, CLAIMS A VIOLATION OF THIS ARTICLE. THE SECRETARY OF STATE SHALL INITIATE ANY INVESTIGATION NO LATER THAN THIRTY DAYS AFTER RECEIPT OF A COMPLAINT AND, WHEN APPROPRIATE, MAY REFER ANY SUCH MATTER FOR PROSECUTION TO THE ATTORNEY GENERAL OR OTHER APPROPRIATE LAW ENFORCEMENT AUTHORITY.

7. THE DEPARTMENT OF STATE SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY CERTIFICATE OF REGISTRATION, OR REPRIMAND ANY REGISTRANT OR DENY AN APPLICATION FOR A CERTIFICATE OF REGISTRATION OR RENEWAL THEREOF UPON PROOF:

(A) THAT THE APPLICANT OR REGISTRANT HAS VIOLATED ANY OF THE PROVISIONS OF THIS ARTICLE OR THE RULES AND REGULATIONS PROMULGATED HEREUNDER;

(B) THAT THE APPLICANT OR REGISTRANT HAS PRACTICED FRAUD, DECEIT OR MISREPRESENTATION OR BEEN CONVICTED OF A FELONY;

(C) THAT THE APPLICANT OR REGISTRANT HAS MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR OR RENEWAL OF HIS OR HER REGISTRATION;

(D) THAT THE APPLICANT OR REGISTRANT HAS DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS IN HIS OR HER ACTIONS.

8. ALL FEES AND OTHER MONEYS DERIVED FROM THE OPERATION OF THIS ARTICLE SHALL ON THE FIFTH DAY OF EACH MONTH BE PAID BY THE DEPARTMENT OF STATE INTO THE STATE TREASURY.

S 3. Subdivision 8 of section 460-e of the general business law, as added by chapter 463 of the laws of 2004, is amended and three new subdivisions 11, 12 and 13 are added to read as follows:

8. Make any misrepresentation or false statement, directly or indirectly, INCLUDING, BUT NOT LIMITED TO, FALSELY REPRESENTING THAT THE OFFERING OR PROVISION OF SERVICES IS NECESSARY, OR THAT THE LIFE, SAFETY OR WELFARE OF THE CUSTOMER OR HIS OR HER FAMILY WOULD BE ADVERSELY AFFECTED IF THE SERVICES OF AN IMMIGRANT ASSISTANCE SERVICES PROVIDER ARE NOT PROVIDED.

11. PROVIDE IMMIGRANT ASSISTANCE SERVICES WITHOUT HAVING FIRST OBTAINED FROM THE DEPARTMENT OF STATE A CURRENT, VALID CERTIFICATE OF REGISTRATION PURSUANT TO SECTION FOUR HUNDRED SIXTY-K OF THIS ARTICLE AND HAVING IN FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEMNITY OR IRREVOCABLE LETTER OF CREDIT PURSUANT TO SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

12. ADVERTISE OR OTHERWISE DISSEMINATE BY ANY MEANS ANY STATEMENT OR OTHER REPRESENTATION INDICATING DIRECTLY OR BY IMPLICATION THAT HE OR SHE ENGAGES IN THE BUSINESS OF IMMIGRANT ASSISTANCE SERVICE PROVIDER OR ACTS IN THE CAPACITY OF AN IMMIGRANT ASSISTANCE SERVICE PROVIDER OR PROPOSES TO ENGAGE IN THE BUSINESS OR ACT IN THE CAPACITY OF AN IMMIGRANT ASSISTANCE SERVICE PROVIDER, UNLESS HE OR SHE HAS ON FILE WITH THE SECRETARY OF STATE A VALID CERTIFICATE OF REGISTRATION PURSUANT TO THIS ARTICLE AND A BOND, CONTRACT OF INDEMNITY OR IRREVOCABLE LETTER OF CREDIT, IN THE AMOUNT AND SUBJECT TO THE TERMS DESCRIBED IN SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

13. FAIL TO REVEAL TO THE CLIENT OR CUSTOMER OF SUCH PROVIDER A MATERIAL FACT REGARDING AN IMMIGRATION MATTER OR REGARDING SERVICES, WHICH FACT COULD NOT BE REASONABLY KNOWN TO THE CLIENT, THE OMISSION OF WHICH TENDS TO MISLEAD OR DECEIVE THE CLIENT OR CUSTOMER.

S 4. Sections 460-g, 460-h and 460-i of the general business law, as added by chapter 463 of the laws of 2004, are amended to read as follows:

S 460-g. Surety requirement. Every provider shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the state of New York, in the principal amount of fifty thousand dollars; provided, however, that every provider that receives in excess of two hundred fifty thousand dollars in total fees and other compensation for providing immigrant assistance service during any twelve-month period shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the state of New York, in the principal amount of twenty percent of such total fees and compensation. Such surety shall be for the benefit of any customer who does not receive a refund of fees from the provider to which he or she is entitled, or is otherwise injured by the provider. The attorney general on behalf of the customer or the customer in his or her own name, may maintain an action against the provider and the surety. THE SECRETARY OF STATE SHALL POST INFORMATION ON THE DEPARTMENT OF STATE WEBSITE DEMONSTRATING THAT THE IMMIGRATION PROVIDER IS IN COMPLIANCE WITH THE BOND AS REQUIRED BY THIS SECTION.

S 460-h. Enforcement. 1. Upon any violation of this article, an application may be made by the attorney general in the name of the people of the state to a court having jurisdiction to issue an injunction, and upon notice to the respondent of not fewer than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than [seven thousand five hundred] TWENTY THOUSAND dollars for each violation, PROVIDED HOWEVER, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR A VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX OR ELEVEN OF SECTION FOUR HUNDRED SIXTY-E OF THIS ARTICLE.

2. A PERSON CLAIMING TO BE AGGRIEVED BY ANY VIOLATION OF THIS ARTICLE BY A PROVIDER MAY BRING A CIVIL ACTION FOR INJUNCTIVE RELIEF, DAMAGES OR BOTH. THE COURT SHALL GRANT A PREVAILING PLAINTIFF REASONABLE ATTORNEYS'

1 FEES AND COSTS. ANY RECOVERY OR PROCEEDING IN A CIVIL ACTION SHALL NOT
2 PRECLUDE AN ACTION BY THE ATTORNEY GENERAL OR DISTRICT ATTORNEY TO
3 PURSUE CRIMINAL CHARGES AGAINST AN IMMIGRANT ASSISTANCE SERVICE PROVID-
4 ER. MINIMAL RECOVERY FOR THE PLAINTIFF SHALL BE FIVE THOUSAND DOLLARS.

5 S 460-i. Violations. [Any] 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO
6 OF THIS SECTION, ANY violation of any provision of this article shall be
7 a class A misdemeanor, and upon conviction the court may order as part
8 of the sentence imposed restitution or reparation to the victim of the
9 crime pursuant to section 60.27 of the penal law.

10 2. ANY VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX OR
11 ELEVEN OF SECTION FOUR HUNDRED SIXTY-E OF THIS ARTICLE SHALL BE A CLASS
12 E FELONY, PROVIDED HOWEVER THAT ANY SUCH VIOLATION SHALL BE A CLASS D
13 FELONY WHEN COMMITTED BY A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF
14 ANY SUCH VIOLATION IN THE PRECEDING TEN YEARS.

15 S 5. This act shall take effect on the first of January next succeed-
16 ing the date on which it shall have become a law; provided, however that
17 effective immediately, the addition, amendment and/or repeal of any rule
18 or regulation necessary for the implementation of this act on its effec-
19 tive date are authorized and directed to be made and completed on or
20 before such effective date.