

S T A T E O F N E W Y O R K

4430--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. ESPAILLAT, BRODSKY -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- recommitted to the Committee on Economic Development, Job Creation, Commerce and Industry in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to immigration providers

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

1 Section 1. The general business law is amended by adding a new section
2 460-k to read as follows:
3 S 460-K. LICENSES. 1. THE DEPARTMENT OF STATE SHALL ISSUE LICENSES TO
4 IMMIGRATION PROVIDERS AND, UPON APPLICATION, TO ISSUE RENEWAL LICENSES
5 EVERY TWO YEARS. THE SECRETARY OF STATE SHALL ENFORCE THE PROVISIONS OF
6 THIS ARTICLE GOVERNING THE FILING AND MAINTENANCE OF SURETY BONDS AND
7 THE APPLICATION FOR LICENSURE AND/OR RENEWAL.
8 2. NO PERSON SHALL ENGAGE IN THE BUSINESS OF IMMIGRANT ASSISTANCE
9 SERVICE AS DEFINED IN SECTION FOUR HUNDRED SIXTY-A OF THIS ARTICLE, OR
10 ADVERTISE HIS OR HER BUSINESS TO BE THAT OF IMMIGRATION PROVIDER WITHOUT
11 HAVING FIRST OBTAINED FROM THE DEPARTMENT OF STATE A LICENSE TO DO SO,
12 PURSUANT TO THIS ARTICLE.
13 3. NO PERSON SHALL DISSEMINATE BY ANY MEANS ANY STATEMENT INDICATING
14 DIRECTLY OR BY IMPLICATION THAT THE PERSON ENGAGES IN THE BUSINESS OF
15 IMMIGRANT ASSISTANCE SERVICE AS DEFINED IN SECTION FOUR HUNDRED SIXTY-A
16 OF THIS ARTICLE OR ACTS IN THE CAPACITY OF AN IMMIGRATION PROVIDER, OR
17 PROPOSES TO ENGAGE IN THE BUSINESS OR ACT IN THE CAPACITY OF AN IMMI-
18 GRATION PROVIDER, UNLESS THE PERSON HAS ON FILE WITH THE SECRETARY OF
19 STATE A BOND AND LICENSE, IN THE AMOUNT AND SUBJECT TO THE TERMS
20 DESCRIBED IN SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

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

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1 4. ANY PERSON INTENDING TO ENGAGE, AS AN IMMIGRATION PROVIDER, IN ANY
2 ONE OR MORE OF THE ACTIVITIES SET FORTH IN THIS ARTICLE SHALL FILE WITH
3 THE DEPARTMENT OF STATE A WRITTEN APPLICATION AND DISCLOSURE, ON FORMS
4 PROVIDED BY THE DEPARTMENT OF STATE, CONTAINING SUCH INFORMATION AND
5 DOCUMENTATION TO BE RETAINED BY THE SECRETARY OF STATE AS THE SECRETARY
6 OF STATE MAY REQUIRE BY RULE AND REGULATION, INCLUDING BUT NOT LIMITED
7 TO: (A) NAME, DATE OF BIRTH, RESIDENCE ADDRESS, BUSINESS ADDRESS, RESI-
8 DENCE TELEPHONE NUMBER, AND BUSINESS TELEPHONE NUMBER; (B) EXPERIENCE
9 THE PROVIDER HAS HAD WITH IMMIGRATION; (C) PLACES OF BUSINESS AND
10 EMPLOYEES, IF ANY; (D) NAME AND ADDRESS OF THE PROVIDER'S AGENT FOR
11 SERVICE OF PROCESS IF ONE IS REQUIRED OR HAS BEEN APPOINTED AND, IF
12 APPLICABLE, THE NAME, BUSINESS ADDRESS, BUSINESS TELEPHONE AND AGENT FOR
13 SERVICE OF PROCESS OF THE CORPORATION OR PARTNERSHIP EMPLOYING THE IMMI-
14 GRATION PROVIDER; (E) A RECORD OF ANY PRIOR CONVICTIONS UNDER THIS ARTI-
15 CLE. THE SECRETARY OF STATE SHALL DEVELOP THE DISCLOSURE FORM REQUIRED
16 TO FILE AN APPLICATION AND BOND PURSUANT TO THIS SECTION AND SECTION
17 FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

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

21 S 2. Section 460-h of the general business law, as added by chapter
22 463 of the laws of 2004, is amended to read as follows:

23 S 460-h. Enforcement. 1. Upon any violation of this article, an appli-
24 cation may be made by the attorney general in the name of the people of
25 the state to a court having jurisdiction to issue an injunction, and
26 upon notice to the respondent of not fewer than five days, to enjoin and
27 restrain the continuance of the violation. If it shall appear to the
28 satisfaction of the court or justice that the defendant has, in fact,
29 violated this article, an injunction may be issued by such court or
30 justice, enjoining and restraining any further violation, without
31 requiring proof that any person has, in fact, been injured or damaged
32 thereby. In any such proceeding, the court may make allowances to the
33 attorney general as provided in paragraph six of subdivision (a) of
34 section eighty-three hundred three of the civil practice law and rules,
35 and direct restitution. Whenever the court shall determine that a
36 violation of this article has occurred, the court may impose a civil
37 penalty of not more than seven thousand five hundred dollars for each
38 violation.

39 2. A PERSON CLAIMING TO BE AGGRIEVED BY ANY VIOLATION OF THIS ARTICLE
40 BY AN IMMIGRATION PROVIDER MAY BRING A CIVIL ACTION FOR INJUNCTIVE
41 RELIEF, DAMAGES OR BOTH. THE COURT SHALL GRANT A PREVAILING PLAINTIFF
42 REASONABLE ATTORNEYS' FEES AND COSTS. ANY RECOVERY OR PROCEEDING IN A
43 CIVIL ACTION SHALL NOT PRECLUDE AN ACTION BY THE ATTORNEY GENERAL OR
44 DISTRICT ATTORNEY TO PURSUE CRIMINAL CHARGES AGAINST AN IMMIGRATION
45 PROVIDER. MINIMAL RECOVERY FOR THE PLAINTIFF SHALL BE FIVE THOUSAND
46 DOLLARS.

47 S 3. This act shall take effect on the first of January next succeed-
48 ing the date on which it shall have become a law; provided, however that
49 effective immediately, the addition, amendment and/or repeal of any rule
50 or regulation necessary for the implementation of this act on its effec-
51 tive date are authorized and directed to be made and completed on or
52 before such effective date.