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

1479

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. PARKER, HASSELL-THOMPSON, KRUEGER -- 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 immigration providers

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

Section 1. The general business law is amended by adding a new section 460-k to read as follows:

S 460-K. LICENSES. 1. THE DEPARTMENT OF STATE SHALL ISSUE LICENSES TO IMMIGRATION PROVIDERS AND, UPON APPLICATION, TO ISSUE RENEWAL LICENSES EVERY TWO YEARS. THE SECRETARY OF STATE SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE GOVERNING THE FILING AND MAINTENANCE OF SURETY BONDS AND THE APPLICATION FOR LICENSURE AND/OR RENEWAL.

2. NO PERSON SHALL ENGAGE IN THE BUSINESS OF IMMIGRANT ASSISTANCE SERVICE AS DEFINED IN SECTION FOUR HUNDRED SIXTY-A OF THIS ARTICLE, OR ADVERTISE HIS OR HER BUSINESS TO BE THAT OF IMMIGRATION PROVIDER WITHOUT HAVING FIRST OBTAINED FROM THE DEPARTMENT OF STATE A LICENSE TO DO SO, PURSUANT TO THIS ARTICLE.

3. NO PERSON SHALL DISSEMINATE BY ANY MEANS ANY STATEMENT INDICATING DIRECTLY OR BY IMPLICATION THAT THE PERSON ENGAGES IN THE BUSINESS OF IMMIGRANT ASSISTANCE SERVICE AS DEFINED IN SECTION FOUR HUNDRED SIXTY-A OF THIS ARTICLE OR ACTS IN THE CAPACITY OF AN IMMIGRATION PROVIDER, OR PROPOSES TO ENGAGE IN THE BUSINESS OR ACT IN THE CAPACITY OF AN IMMIGRATION PROVIDER, UNLESS THE PERSON HAS ON FILE WITH THE SECRETARY OF STATE A BOND AND LICENSE, IN THE AMOUNT AND SUBJECT TO THE TERMS DESCRIBED IN SECTION FOUR HUNDRED SIXTY-G OF THIS ARTICLE.

4. ANY PERSON INTENDING TO ENGAGE, AS AN IMMIGRATION 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 PROVIDED BY THE DEPARTMENT OF STATE, CONTAINING SUCH INFORMATION AND

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

LBD01758-01-1

DOCUMENTATION TO BE RETAINED BY THE SECRETARY OF STATE AS THE SECRETARY OF STATE MAY REQUIRE BY RULE AND REGULATION, INCLUDING BUT NOT LIMITED TO: (A) NAME, DATE OF BIRTH, RESIDENCE ADDRESS, BUSINESS ADDRESS, RESIDENCE TELEPHONE NUMBER, AND BUSINESS TELEPHONE NUMBER; (B) EXPERIENCE THE PROVIDER HAS HAD WITH IMMIGRATION; (C) PLACES OF BUSINESS AND EMPLOYEES, IF ANY; (D) NAME AND ADDRESS OF THE PROVIDER'S AGENT FOR SERVICE OF PROCESS IF ONE IS REQUIRED OR HAS BEEN APPOINTED AND, IF APPLICABLE, THE NAME, BUSINESS ADDRESS, BUSINESS TELEPHONE AND AGENT FOR SERVICE OF PROCESS OF THE CORPORATION OR PARTNERSHIP EMPLOYING THE IMMIGRATION PROVIDER; (E) A RECORD OF ANY PRIOR CONVICTIONS UNDER THIS ARTICLE. 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.

5. THE SECRETARY OF STATE SHALL CHARGE AND COLLECT A 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.

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

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 dollars for each violation.

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

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