

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Economic Development

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 IMMIGRATION
18 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.
21 4. ANY PERSON INTENDING TO ENGAGE, AS AN IMMIGRATION PROVIDER, IN ANY
22 ONE OR MORE OF THE ACTIVITIES SET FORTH IN THIS ARTICLE SHALL FILE WITH
23 THE DEPARTMENT OF STATE A WRITTEN APPLICATION AND DISCLOSURE, ON FORMS
24 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.

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

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

17 S 2. Section 460-h of the general business law, as added by chapter
18 463 of the laws of 2004, is amended to read as follows:

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

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

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