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

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I N A S S E M B L Y

March 6, 2014

Introduced by M. of A. CRESPO, RAMOS, MOYA, SEPULVEDA, WEPRIN, SCARBOROUGH, PERRY, GUNTHER, ARROYO, RIVERA, DAVILA, HEASTIE -- Multi-Sponsored by -- M. of A. GOTTFRIED, HOOPER, JACOBS, MILLER, MONTESANO, TITONE, WEINSTEIN -- read once and referred to the Committee on Governmental Operations -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to implementing the immigrant assistance service enforcement act; to amend the executive law, in relation to creating the office of new Americans; and to amend the penal law, in relation to the crime of immigrant assistance fraud

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

Section 1. This act shall be known and may be cited as the "immigrant assistance service enforcement act".

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

S 460-a. Definitions AND APPLICABILITY. For the purpose of this article the following terms shall have the following meanings:

1. "Immigrant assistance service" means providing assistance, for a fee or other compensation, to persons who have, or plan to, come to the United States from a foreign country, or their representatives, in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person which arises under the immigration and nationality law, executive order or presidential proclamation, or which arises under actions or regulations of the United States [bureau of] citizenship and immigration services, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, the United States department of labor, or the United States department of state.

2. "Provider" means any person, including but not limited to a corporation, partnership, limited liability company, sole proprietorship or

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

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natural person, that provides immigrant assistance services, but shall not include (a) any person duly admitted to practice law in this state and any person working directly under the supervision of the person admitted; (b) any not-for-profit tax exempt organization that provides immigrant assistance without a fee or other payment from individuals or at nominal fees as defined by the federal board of immigration appeals, and the employees of such organization when acting within the scope of such employment; (c) any organization recognized by the federal board of immigration appeals that provides services via representatives accredited by such board to appear before the [bureau of] UNITED STATES citizenship and immigration services and/or executive office for immigration review, that does not charge a fee or charges nominal fees as defined by the board of immigration appeals; [or] (d) any authorized agency under subdivision ten of section three hundred seventy-one of the social services law and the employees of such organization when acting within the scope of such employment; OR (E) ANY INDIVIDUAL PROVIDING REPRESENTATION IN AN IMMIGRATION-RELATED PROCEEDING UNDER FEDERAL LAW FOR WHICH FEDERAL LAW OR REGULATION ESTABLISHES SUCH INDIVIDUAL'S AUTHORITY TO APPEAR.

S 3. Sections 460-b, 460-c, 460-d, 460-e, 460-f, 460-g and 460-i of the general business law, as added by chapter 463 of the laws of 2004, are amended and a new section 460-g is added to read as follows:

S 460-b. Immigrant assistance service contracts. 1. No immigrant assistance service shall be provided until the customer has executed a written contract with the IMMIGRANT ASSISTANT SERVICE provider [who will provide such services]. The contract shall be in a language understood by the customer, either alone or with the assistance of an available interpreter, and, if that language is not English, an English language version of the contract must also be provided. A copy of the contract shall be provided to the customer upon the customer's execution of the contract. THE INTERPRETER SHALL PROVIDE AN ATTESTATION AFFIRMING THE ACCURACY OF HIS OR HER TRANSLATION, TO BE ATTACHED TO THE CONTRACT.

2. (A) The customer has the right to cancel the contract within three business days after his or her execution of the contract, without fee or penalty. The right to cancel the contract within three days without payment of any fee may be waived when services must be provided immediately to avoid a forfeiture of eligibility or other loss of rights or privileges, and the customer furnishes the provider with a separate dated and signed statement, by the customer or his or her representative, describing the need for services to be provided within three days and expressly acknowledging and waiving the right to cancel the contract within three days.

(B) The contract may be cancelled at any time after execution. If the contract is cancelled [after] MORE THAN three days AFTER IT WAS SIGNED, or within three days AFTER IT WAS SIGNED if the right to cancel without fee has been waived, the provider may retain fees for services rendered, and any additional amounts actually expended on behalf of the customer. All other amounts must be returned to the customer within fifteen days after cancellation.

3. The written contract shall be in plain language, in at least twelve point type and shall include the following:

[1.] (A) The name, address and telephone number of the provider.

[2.] (B) Itemization of all services to be provided to the customer, as well as the fees and costs to be charged to the customer FOR EACH SERVICE.

[3.] (C) A statement that original documents required to be submitted in connection with an application made to the [federal bureau of] UNITED STATES citizenship and immigration services or for other certifications, benefits or services provided by government may not be retained by the immigrant assistance service provider for any reason, including [payment of] FAILURE OF THE CUSTOMER TO PAY fees or costs OR OTHER FEE DISPUTE.

[4.] (D) A statement that the provider shall give the customer a copy of each document [filed with a governmental entity] PREPARED WITH THE PROVIDER'S ASSISTANCE.

[5.] (E) A statement that the customer is not required to obtain supporting documents through the immigrant assistance service provider, [but] AND may obtain such documents himself or herself, ALONG WITH THE STATEMENT: "THE U.S. GOVERNMENT PROVIDES INFORMATION ON REQUIRED FORMS AND DOCUMENTATION FOR FREE ONLINE AND BY PHONE".

[6.] (F) The statement: "You MAY CANCEL THIS CONTRACT AT ANY TIME. YOU have three (3) business days to cancel this contract WITHOUT FEE OR PENALTY AND GET BACK ANY FEES THAT YOU HAVE ALREADY PAID. Notice of cancellation [must be in writing, signed by you and mailed by registered or certified] MAY BE MADE BY COMPLETING THE CANCELLATION FORM INCLUDED IN THIS CONTRACT, OR OTHERWISE NOTIFYING THE PROVIDER IN WRITING AND DELIVERING SUCH FORM OR NOTIFICATION TO THE PROVIDER IN PERSON OR BY United States mail to (specify address). If you cancel this contract [within three days,] you will get back [your] ANY documents [and any fees that you paid] YOU SUBMITTED TO THE PROVIDER".

(G) EACH CONTRACT SHALL CONTAIN A SEPARATE FINAL PAGE TITLED "CANCELLATION FORM." THE CANCELLATION FORM SHALL CONTAIN THE FOLLOWING STATEMENT: "I HEREBY CANCEL THE CONTRACT OF (DATE OF CONTRACT) BETWEEN (NAME OF PROVIDER, ADDRESS OF PROVIDER, AND PHONE NUMBER OF PROVIDER) AND (NAME OF CUSTOMER)." BELOW THE STATEMENT SHALL BE A CUSTOMER SIGNATURE AND DATE LINE. BELOW THE SIGNATURE AND DATE LINE, THE FORM SHALL CONTAIN THE STATEMENT REQUIRED BY PARAGRAPH (H) OF THIS SUBDIVISION, PRINTED IN TWELVE POINT OR LARGER TEXT.

[7.] (H) A statement that the [immigration services] IMMIGRANT ASSISTANCE SERVICE provider has financial surety in effect for the benefit of any customer in the event that the customer is owed a refund, or is damaged by the actions of the provider, together with the name, address and telephone number of the surety.

[8.] (I) The statement: "The individual providing assistance to you under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the [bureau of] UNITED STATES citizenship and immigration services, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice["]. FOR A FREE LEGAL REFERRAL CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (PHONE NUMBER OF THE OFFICE FOR NEW AMERICANS), THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL AT (PHONE NUMBER OF THE OFFICE OF THE ATTORNEY GENERAL), OR YOUR LOCAL DISTRICT ATTORNEY OR PROSECUTOR." THE SERVICE PROVIDER SHALL BE RESPONSIBLE FOR PROVIDING THE ACCURATE AND UP-TO-DATE PHONE NUMBERS REQUIRED IN SUCH STATEMENT.

[9.] (J) The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any information ABOUT YOU TO, or filing any forms or documents ON YOUR BEHALF with, immigration or other authorities without your knowledge and consent EXCEPT AS REQUIRED BY LAW." A PROVIDER SHALL PROMPTLY NOTIFY THE CUSTOMER IN WRITING WHEN SUCH PROVIDER HAS DISCLOSED ANY INFORMATION TO OR FILED ANY

FORM OR DOCUMENT WITH IMMIGRATION OR OTHER AUTHORITIES WHEN SUCH DISCLOSURE OR FILING WAS REQUIRED BY LAW AND DONE WITHOUT THE KNOWLEDGE AND CONSENT OF THE CUSTOMER.

[10.] (K) The statement: "A copy of all forms completed and documents accompanying the forms shall be kept by the service provider for three years. A copy of the [customers] CUSTOMER'S file shall be provided to the [client] CUSTOMER on demand and without fee."

(L) ON THE SAME PAGE AS THE SIGNATURE LINE, THE STATEMENT: "THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU UNDER THE TERMS OF THIS CONTRACT MUST EXPLAIN THE CONTENTS OF THIS CONTRACT TO YOU AND ANSWER ANY QUESTIONS ABOUT IT THAT YOU MAY HAVE."

S 460-c. REQUIRED NOTICES. 1. Posting of signs. Every provider shall post signs, at every location where such provider meets with customers, setting forth information in English and in every other language in which the person provides or offers to provide immigrant assistance SERVICES. There shall be a separate sign for each language, and each shall be posted in a location where it will be visible to customers.

[1.] (A) One sign shall be at least eleven inches by seventeen inches, and shall contain the following in not less than sixty point type:

"THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU UNDER THIS [CONTACT] CONTRACT IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION TO YOU BEFORE THE [BUREAU OF] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE["]. FOR A FREE LEGAL REFERRAL CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (PHONE NUMBER OF THE OFFICE FOR NEW AMERICANS). TO FILE A COMPLAINT ABOUT AN IMMIGRANT ASSISTANCE SERVICE PROVIDER CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (PHONE NUMBER OF THE OFFICE FOR NEW AMERICANS), THE NEW YORK STATE OFFICE OF ATTORNEY GENERAL AT (PHONE NUMBER OF THE OFFICE OF ATTORNEY GENERAL), OR YOUR LOCAL DISTRICT ATTORNEY OR PROSECUTOR'S OFFICE AT (PHONE NUMBER OF THE LOCAL DISTRICT ATTORNEY)." THE SERVICE PROVIDER SHALL BE RESPONSIBLE FOR PROVIDING THE ACCURATE AND UP-TO-DATE PHONE NUMBERS REQUIRED ON SUCH SIGN.

[2.] (B) A separate sign shall be posted in a location visible to customers in conspicuous size type and which contains the schedule of fees for services offered and the statement: "YOU MAY CANCEL ANY CONTRACT WITHIN 3 BUSINESS DAYS AND GET BACK YOUR DOCUMENTS AND ANY MONEY YOU PAID."

[S 460-d.] 2. Notice in advertisements. Every provider who advertises immigrant assistance services, whether by signs, pamphlets, newspapers, or any other written communication shall post or otherwise include with such advertisement a notice in the language in which the advertisement appears. This notice shall be of a conspicuous size and shall state: "THE INDIVIDUAL [PROVIDING] OFFERING TO PROVIDE IMMIGRANT ASSISTANCE [TO YOU] SERVICES IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION [TO YOU] BEFORE THE [BUREAU OF] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE[".]."

S [460-e.] 460-D. Prohibited acts. No provider shall:

1. Give legal advice, or otherwise engage in the practice of law.

2. Assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language, or represent or advertise other titles or credentials, including but not limited to "notary public", "accredited representative of the board of immigration appeals["]," "NOTARIO PUBLIC", "NOTARIO", "IMMIGRATION SPECIALIST" or "immigration consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public licensed by the secretary of state may use the term "notary public."

3. State or imply that the [person] PROVIDER can or will obtain special favors from or has special influence with the [bureau of] UNITED STATES citizenship and immigration services, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW or any other governmental entity[, or threaten].

4. THREATEN to report the [client] CUSTOMER to immigration or other authorities or THREATEN TO undermine in any way the [client's] CUSTOMER'S immigration status or attempt to secure lawful status.

[4.] 5. Demand or retain any fees or compensation for services not performed, SERVICES TO BE PERFORMED IN THE FUTURE, or costs that are not actually incurred.

[5.] 6. Advise, direct or permit a customer to answer questions on a government document, or in a discussion with a government official, in a specific way where the provider knows or has reasonable cause to believe that the answers are false or misleading.

[6.] 7. Disclose any information to, or file any forms or documents with, immigration or other authorities ON BEHALF OF A CUSTOMER without the knowledge or consent of the customer EXCEPT WHERE REQUIRED BY LAW. A PROVIDER SHALL PROMPTLY NOTIFY THE CUSTOMER IN WRITING WHEN SUCH PROVIDER HAS DISCLOSED ANY INFORMATION TO OR FILED ANY FORM OR DOCUMENT WITH IMMIGRATION OR OTHER AUTHORITIES WHEN SUCH DISCLOSURE OR FILING WAS REQUIRED BY LAW AND DONE WITHOUT THE KNOWLEDGE AND CONSENT OF THE CUSTOMER.

[7.] 8. Fail to provide customers with copies of documents filed with a governmental entity or refuse to return original documents supplied by, prepared on behalf of, or paid for by the customer, upon the request of the customer, or upon termination of the contract. Original documents must be returned promptly upon request and upon cancellation of the contract, even if there is a fee dispute between the immigration assistance service provider and the customer.

[8.] 9. Make any misrepresentation or false statement, directly or indirectly.

[9.] 10. Make any guarantee or promise to a customer, unless there is a basis in fact for such representation, and the guarantee or promise is in writing.

[10.] 11. Represent that a fee may be charged, or charge a fee for the distribution, provision or submission of an official document or form issued or promulgated by a state or federal governmental entity, or for a referral of the customer to another person or entity that is qualified to provide services or assistance which the immigrant assistance service provider will not provide.

12. FOR A FEE OR OTHER COMPENSATION REFER A CUSTOMER TO AN ATTORNEY OR ANY OTHER INDIVIDUAL OR ENTITY THAT CAN PROVIDE SERVICES THAT THE IMMIGRANT ASSISTANCE SERVICE PROVIDER CANNOT PROVIDE.

13. GIVE ADVICE ON THE DETERMINATION OF A PERSON'S IMMIGRATION STATUS, INCLUDING ADVISING HIM OR HER AS TO ANSWERS ON A GOVERNMENT FORM REGARDING SUCH DETERMINATION.

14. PROMISE TO EXPEDITE IMMIGRATION OR OTHER IMMIGRATION RELATED GOVERNMENTAL BENEFIT PROCESSES, THROUGH CLAIMS TO HAVE SPECIAL RELATIONSHIPS WITH OR SPECIAL ACCESS TO GOVERNMENT EMPLOYEES WHO WILL EXPEDITE APPLICATIONS OR ISSUE FAVORABLE DECISIONS FOR ANY REASON OTHER THAN THE MERITS OF THE APPLICATION.

15. KNOWINGLY PROVIDE MISLEADING OR FALSE INFORMATION TO A NONCITIZEN ABOUT HIS OR HER INDIVIDUAL OR FAMILY'S ELIGIBILITY FOR IMMIGRATION BENEFITS OR STATUS, OR TO NONCITIZENS OR CITIZENS ABOUT THEIR INDIVIDUAL OR FAMILY'S ELIGIBILITY FOR OTHER GOVERNMENT BENEFITS, WITH THE INTENT TO INDUCE AN INDIVIDUAL TO EMPLOY THE SERVICES OF THE SERVICE PROVIDER TO OBTAIN SUCH IMMIGRATION BENEFITS OR STATUS, OR SUCH OTHER GOVERNMENT BENEFITS.

S [460-f.] 460-E. Retention of documents. [Every] A provider shall retain copies of all documents prepared or obtained in connection with a customer's request for assistance for a period of three years after a written contract is executed by the provider and the customer, whether or not such contract is subsequently cancelled.

S [460-g.] 460-F. Surety requirement. Every provider shall maintain in full force and effect FOR THE ENTIRE PERIOD DURING WHICH THE PROVIDER PROVIDES IMMIGRANT ASSISTANCE SERVICES AND FOR ONE YEAR AFTER THE PROVIDER CEASED TO DO BUSINESS AS AN IMMIGRANT ASSISTANCE SERVICE PROVIDER, 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.

S 460-G. ACTION. AN INDIVIDUAL WHO IS HARMED BY A PROVIDER AS A RESULT OF A PROVIDER'S VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME AGAINST A PROVIDER TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR TWENTY-FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS, IN ADDITION TO ANY OTHER REMEDY AVAILABLE IN LAW OR EQUITY. THE COURT MAY AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 460-i. Violations. Any violation of any provision of this article shall be a class A misdemeanor, and upon conviction THEREOF, SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT; PROVIDED HOWEVER, A SECOND OR SUBSEQUENT OFFENSE SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN THREE THOUSAND DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. IN ADDITION, the court may order as part of the sentence imposed restitution or reparation to the victim of the crime pursuant to section 60.27 of the penal law. THE ATTORNEY GENERAL SHALL HAVE THE POWER TO PROSECUTE ANY VIOLATION OF THIS ARTICLE.

S 4. 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. 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] TEN THOUSAND DOLLARS for each violation.

S 5. The general business law is amended by adding a new section 460-k to read as follows:

S 460-K. ADDITIONAL CIVIL PENALTY FOR CONSUMER FRAUDS COMMITTED AGAINST USERS OF IMMIGRANT ASSISTANCE SERVICES. 1. (A) IN ADDITION TO ANY LIABILITY FOR DAMAGES OR A CIVIL PENALTY IMPOSED PURSUANT TO SECTIONS THREE HUNDRED FORTY-NINE, THREE HUNDRED FIFTY-C AND THREE HUNDRED FIFTY-D OF THIS CHAPTER, REGARDING DECEPTIVE PRACTICES AND FALSE ADVERTISING, AND SUBDIVISION TWELVE OF SECTION SIXTY-THREE OF THE EXECUTIVE LAW, REGARDING PROCEEDINGS BY THE ATTORNEY GENERAL FOR EQUITABLE RELIEF AGAINST FRAUDULENT OR ILLEGAL CONSUMER FRAUD, A PERSON OR ENTITY WHO ENGAGES IN ANY CONDUCT PROHIBITED BY SAID PROVISIONS OF LAW, AND WHOSE CONDUCT IS PERPETRATED AGAINST ONE OR MORE PERSONS SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES, MAY BE LIABLE FOR AN ADDITIONAL CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS, IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

(B) IN DETERMINING WHETHER TO IMPOSE A SUPPLEMENTAL CIVIL PENALTY PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, AND THE AMOUNT OF ANY SUCH PENALTY, THE COURT SHALL CONSIDER, IN ADDITION TO OTHER APPROPRIATE FACTORS, THE EXTENT TO WHICH THE FOLLOWING FACTORS ARE PRESENT:

(1) WHETHER THE DEFENDANT KNEW THAT HIS OR HER CONDUCT WAS DIRECTED TO ONE OR MORE PERSONS SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES OR WHETHER THE DEFENDANT KNOWINGLY ACTED WITH DISREGARD FOR THE RIGHTS OF A PERSON SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES;

(2) WHETHER THE DEFENDANT'S CONDUCT: (I) CAUSED A PERSON SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES TO SUFFER LOSS OR ENCUMBRANCE OF A PRIMARY RESIDENCE, LOSS OF EMPLOYMENT OR SOURCE OF INCOME, SUBSTANTIAL LOSS OF PROPERTY OR ASSETS ESSENTIAL TO THE HEALTH OR WELFARE OF THE PERSON SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES; OR (II) WHETHER ONE OR MORE PERSONS SEEKING OR USING IMMIGRANT ASSISTANCE SERVICES WERE SUBSTANTIALLY MORE VULNERABLE TO THE DEFENDANT'S CONDUCT BECAUSE OF IMPAIRED UNDERSTANDING, OR ANY OTHER PERCEIVED DISADVANTAGE, AND ACTUALLY SUFFERED PHYSICAL OR ECONOMIC DAMAGE RESULTING FROM THE DEFENDANT'S CONDUCT.

2. RESTITUTION ORDERED PURSUANT TO THE PROVISIONS OF LAW LISTED IN SUBDIVISION ONE OF THIS SECTION OR PURSUANT TO ANY OTHER SECTION OF LAW SHALL BE GIVEN PRIORITY OVER THE IMPOSITION OF CIVIL PENALTIES ORDERED BY THE COURT UNDER THIS SECTION.

S 6. The executive law is amended by adding a new section 94-b to read as follows:

S 94-B. OFFICE FOR NEW AMERICANS. 1. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT, ACCORDING TO THE 2010 CENSUS, APPROXIMATELY TWENTY-TWO PERCENT OF NEW YORKERS WERE NOT BORN IN THE UNITED STATES, NINE PERCENT ABOVE THE NATIONAL AVERAGE. FOR YEARS IMMIGRANTS HAVE COME TO THE UNITED STATES TO MAKE A BETTER LIFE FOR THEMSELVES. IT IS OF UTMOST IMPORTANCE TO THE STATE THAT THESE NEW AMERICANS BE GIVEN THE TOOLS TO ASSIST THEM IN MAKING A BETTER LIFE FOR THEMSELVES, PARTICULARLY THROUGH PROGRAMS THAT HELP DEVELOP AND LEVERAGE THEIR SKILLS AND STRENGTHEN THEIR CONNECTIONS WITH THEIR COMMUNITIES AND THROUGH PROGRAMS TO REDUCE EXPLOITATION OF VULNERABLE IMMIGRANT POPULATIONS.

2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERMS "NEW AMERICAN" AND "IMMIGRANT" SHALL REFER TO NON-CITIZEN DOMICILARIES OF NEW YORK STATE WHOSE COUNTRY OF ORIGIN IS OTHER THAN THE UNITED STATES.

3. OFFICE FOR NEW AMERICANS; DIRECTOR. THERE IS HEREBY CREATED WITHIN THE DEPARTMENT OF STATE THE OFFICE FOR NEW AMERICANS. THE SECRETARY SHALL APPOINT A DIRECTOR OF THE OFFICE TO ACCOMPLISH THE RESPONSIBILITIES SET FORTH IN THIS SECTION. SUCH DIRECTOR SHALL RECEIVE AN ANNUAL SALARY WITHIN AMOUNTS APPROPRIATED AND SHALL SERVE AT THE PLEASURE OF THE SECRETARY.

4. ORGANIZATION OF THE OFFICE FOR NEW AMERICANS. THE SECRETARY SHALL HAVE THE POWER TO ESTABLISH, CONSOLIDATE, REORGANIZE, OR ABOLISH ANY ORGANIZATIONAL UNITS WITHIN THE OFFICE AS HE OR SHE DETERMINES TO BE NECESSARY FOR EFFICIENT OPERATION THEREOF. THE SECRETARY SHALL ASSIGN FUNCTIONS TO ANY SUCH UNIT AND MAY APPOINT STAFF, AGENTS, AND CONSULTANTS, PRESCRIBE THEIR DUTIES, AND FIX THEIR COMPENSATION WITHIN AMOUNTS APPROPRIATED.

5. POWERS AND DUTIES OF THE OFFICE FOR NEW AMERICANS. THE OFFICE FOR NEW AMERICANS SHALL HAVE THE POWER AND RESPONSIBILITY TO:

(A) CREATE A NETWORK OF NEIGHBORHOOD-BASED OPPORTUNITY CENTERS;

(B) INCREASE ACCESS TO ENGLISH-FOR-SPEAKERS-OF-OTHER-LANGUAGES (ESOL) TRAINING, INCLUDING BY ENGAGING NOT-FOR-PROFIT ORGANIZATIONS AND OTHER QUALIFIED PROVIDERS OF ESOL TRAINING SERVICES;

(C) ASSIST IMMIGRANTS IN MATTERS RELATING TO IMMIGRATION STATUS, INCLUDING BUT NOT LIMITED TO ASSISTING WITH THE NATURALIZATION PROCESS AND APPLICATIONS FOR DEFERRED ACTION FOR CHILDHOOD ARRIVALS;

(D) CONNECT IMMIGRANTS TO BUSINESS RESOURCES THAT HARNESS THEIR SKILLS, EMPLOYMENT REFERRAL PROGRAMS, AND OTHER WORKFORCE DEVELOPMENT PROGRAMS;

(E) DEVELOP AND LEVERAGE THE SKILLS OF IMMIGRANTS TO BENEFIT THEIR COMMUNITIES AND THE STATE;

(F) STRENGTHEN THE CONNECTIONS BETWEEN IMMIGRANTS AND THEIR COMMUNITIES THROUGH CIVIC ENGAGEMENT;

(G) REDUCE EXPLOITATION OF IMMIGRANTS;

(H) ESTABLISH A TOLL-FREE MULTI-LINGUAL HOTLINE AND A WEBSITE FOR PURPOSES INCLUDING BUT NOT LIMITED TO DISSEMINATION OF INFORMATION ABOUT THE PROGRAMS AND SERVICES OFFERED BY THE OFFICE FOR NEW AMERICANS, REFERRAL FOR SERVICES, AND RECEIPT OF COMPLAINTS RELATING TO FRAUD AND OTHER RELATED CRIMES AGAINST IMMIGRANTS;

(I) ENSURE THAT INDIVIDUALS REFERRED BY THE OFFICE ARE DIRECTED TO SERVICE PROVIDERS WHO ARE IN COMPLIANCE WITH ARTICLE TWENTY-EIGHT-C OF THE GENERAL BUSINESS LAW OR PROVIDERS CERTIFIED BY THE BUREAU OF IMMIGRATION APPEALS;

(J) USING INFORMATION DEVELOPED BY THE OFFICE THROUGH THE HOTLINE, ASSIST LAW ENFORCEMENT IN COMBATTING CRIMES AGAINST IMMIGRANTS;

(K) ADVISE THE GOVERNOR AND SECRETARY CONCERNING MATTERS AFFECTING IMMIGRANTS IN THE STATE IN ORDER TO PROMOTE AND ENCOURAGE THE FULL PARTICIPATION OF IMMIGRANTS IN THE STATE'S CIVIC AND ECONOMIC LIFE;

(L) COORDINATE WITH OTHER STATE AGENCIES AND OTHERWISE MARSHAL THE RESOURCES OF THE STATE TO SERVE THE NEEDS OF IMMIGRANTS;

(M) ENCOURAGE AND ASSIST LOCAL GOVERNMENTS IN THE DEVELOPMENT OF ACTIVITIES TO ENHANCE CIVIC ENGAGEMENT AMONG IMMIGRANTS AND IN IMMIGRANT COMMUNITIES; AND

(N) BEGINNING IN TWO THOUSAND FIFTEEN, BY JUNE FIFTEENTH OF EACH YEAR, PRODUCE A REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, AND THE TEMPORARY PRESIDENT OF THE SENATE DESCRIBING THE ACTIVITIES OF THE OFFICE, INCLUDING BUT NOT LIMITED TO, SUMMARIZING CALLS RECEIVED THROUGH THE HOTLINE AND WEBSITE, INFORMATION ON ESOL TRAINING SERVICES PROVIDED BY THE OFFICE, THE NUMBER OF IMMIGRANTS ASSISTED THROUGH THE OPPORTUNITY CENTERS, OR AN ESTIMATION THEREOF, THE STATUS OF ANY WORKFORCE DEVELOPMENT PROGRAMS, AND ANY OTHER RELEVANT INFORMATION.

S 7. The penal law is amended by adding a new section 190.87 to read as follows:

S 190.87 IMMIGRANT ASSISTANT SERVICES FRAUD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE SECOND DEGREE WHEN, WITH INTENT TO DEFRAUD ANOTHER PERSON SEEKING IMMIGRANT ASSISTANCE SERVICES, AS DEFINED IN ARTICLE TWENTY-EIGHT-C OF THE GENERAL BUSINESS LAW, FROM SUCH PERSON, HE OR SHE VIOLATES SECTION FOUR HUNDRED SIXTY-D OF THE GENERAL BUSINESS LAW WITH INTENT TO OBTAIN PROPERTY FROM SUCH OTHER PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND THEREBY WRONGFULLY OBTAINS SUCH PROPERTY.

IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 8. The penal law is amended by adding a new section 190.89 to read as follows:

S 190.89 IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE FIRST DEGREE WHEN, WITH INTENT TO DEFRAUD ANOTHER PERSON SEEKING IMMIGRANT ASSISTANCE SERVICES, AS DEFINED IN ARTICLE TWENTY-EIGHT-C OF THE GENERAL BUSINESS LAW, FROM SUCH PERSON, HE OR SHE VIOLATES SECTION FOUR HUNDRED SIXTY-D OF THE GENERAL BUSINESS LAW WITH INTENT TO OBTAIN PROPERTY FROM SUCH OTHER PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND THEREBY WRONGFULLY OBTAINS SUCH PROPERTY WITH A VALUE IN EXCESS OF ONE THOUSAND DOLLARS.

IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE FIRST DEGREE IS A CLASS E FELONY.

S 9. This act shall take effect on the one hundred eightieth day after it shall have become a law. 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 to be made and completed on or before such effective date.