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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:

1 Section 1. This act shall be known and may be cited as the "immigrant
2 assistance service enforcement act".
3 S 2. Section 460-a of the general business law, as added by chapter
4 463 of the laws of 2004, is amended to read as follows:
5 S 460-a. Definitions AND APPLICABILITY. For the purpose of this arti-
6 cle the following terms shall have the following meanings:
7 1. "Immigrant assistance service" means providing assistance, for a
8 fee or other compensation, to persons who have, or plan to, come to the
9 United States from a foreign country, or their representatives, in
10 relation to any proceeding, filing or action affecting the non-immi-
11 grant, immigrant or citizenship status of a person which arises under
12 the immigration and nationality law, executive order or presidential
13 proclamation, or which arises under actions or regulations of the United
14 States [bureau of] citizenship and immigration services, THE UNITED
15 STATES DEPARTMENT OF HOMELAND SECURITY, the United States department of
16 labor, or the United States department of state.
17 2. "Provider" means any person, including but not limited to a corpo-
18 ration, 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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1 natural person, that provides immigrant assistance services, but shall
2 not include (a) any person duly admitted to practice law in this state
3 and any person working directly under the supervision of the person
4 admitted; (b) any not-for-profit tax exempt organization that provides
5 immigrant assistance without a fee or other payment from individuals or
6 at nominal fees as defined by the federal board of immigration appeals,
7 and the employees of such organization when acting within the scope of
8 such employment; (c) any organization recognized by the federal board of
9 immigration appeals that provides services via representatives accred-
10 ited by such board to appear before the [bureau of] UNITED STATES citi-
11 zenship and immigration services and/or executive office for immigration
12 review, that does not charge a fee or charges nominal fees as defined by
13 the board of immigration appeals; [or] (d) any authorized agency under
14 subdivision ten of section three hundred seventy-one of the social
15 services law and the employees of such organization when acting within
16 the scope of such employment; OR (E) ANY INDIVIDUAL PROVIDING REPRES-
17 TATION IN AN IMMIGRATION-RELATED PROCEEDING UNDER FEDERAL LAW FOR WHICH
18 FEDERAL LAW OR REGULATION ESTABLISHES SUCH INDIVIDUAL'S AUTHORITY TO
19 APPEAR.

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

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

33 2. (A) The customer has the right to cancel the contract within three
34 business days after his or her execution of the contract, without fee or
35 penalty. The right to cancel the contract within three days without
36 payment of any fee may be waived when services must be provided imme-
37 diately to avoid a forfeiture of eligibility or other loss of rights or
38 privileges, and the customer furnishes the provider with a separate
39 dated and signed statement, by the customer or his or her represen-
40 tative, describing the need for services to be provided within three
41 days and expressly acknowledging and waiving the right to cancel the
42 contract within three days.

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

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

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

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

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

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

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

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

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

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

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

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

1 FORM OR DOCUMENT WITH IMMIGRATION OR OTHER AUTHORITIES WHEN SUCH DISCLO-
2 SURE OR FILING WAS REQUIRED BY LAW AND DONE WITHOUT THE KNOWLEDGE AND
3 CONSENT OF THE CUSTOMER.

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

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

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

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

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

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

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

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

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

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

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

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

19 [4.] 5. Demand or retain any fees or compensation for services not
20 performed, SERVICES TO BE PERFORMED IN THE FUTURE, or costs that are not
21 actually incurred.

22 [5.] 6. Advise, direct or permit a customer to answer questions on a
23 government document, or in a discussion with a government official, in a
24 specific way where the provider knows or has reasonable cause to believe
25 that the answers are false or misleading.

26 [6.] 7. Disclose any information to, or file any forms or documents
27 with, immigration or other authorities ON BEHALF OF A CUSTOMER without
28 the knowledge or consent of the customer EXCEPT WHERE REQUIRED BY LAW. A
29 PROVIDER SHALL PROMPTLY NOTIFY THE CUSTOMER IN WRITING WHEN SUCH PROVID-
30 ER HAS DISCLOSED ANY INFORMATION TO OR FILED ANY FORM OR DOCUMENT WITH
31 IMMIGRATION OR OTHER AUTHORITIES WHEN SUCH DISCLOSURE OR FILING WAS
32 REQUIRED BY LAW AND DONE WITHOUT THE KNOWLEDGE AND CONSENT OF THE
33 CUSTOMER.

34 [7.] 8. Fail to provide customers with copies of documents filed with
35 a governmental entity or refuse to return original documents supplied
36 by, prepared on behalf of, or paid for by the customer, upon the request
37 of the customer, or upon termination of the contract. Original documents
38 must be returned promptly upon request and upon cancellation of the
39 contract, even if there is a fee dispute between the immigration assist-
40 ance service provider and the customer.

41 [8.] 9. Make any misrepresentation or false statement, directly or
42 indirectly.

43 [9.] 10. Make any guarantee or promise to a customer, unless there is
44 a basis in fact for such representation, and the guarantee or promise is
45 in writing.

46 [10.] 11. Represent that a fee may be charged, or charge a fee for the
47 distribution, provision or submission of an official document or form
48 issued or promulgated by a state or federal governmental entity, or for
49 a referral of the customer to another person or entity that is qualified
50 to provide services or assistance which the immigrant assistance service
51 provider will not provide.

52 12. FOR A FEE OR OTHER COMPENSATION REFER A CUSTOMER TO AN ATTORNEY OR
53 ANY OTHER INDIVIDUAL OR ENTITY THAT CAN PROVIDE SERVICES THAT THE IMMI-
54 GRANT ASSISTANCE SERVICE PROVIDER CANNOT PROVIDE.

1 13. GIVE ADVICE ON THE DETERMINATION OF A PERSON'S IMMIGRATION STATUS,
2 INCLUDING ADVISING HIM OR HER AS TO ANSWERS ON A GOVERNMENT FORM REGARD-
3 ING SUCH DETERMINATION.

4 14. PROMISE TO EXPEDITE IMMIGRATION OR OTHER IMMIGRATION RELATED
5 GOVERNMENTAL BENEFIT PROCESSES, THROUGH CLAIMS TO HAVE SPECIAL RELATION-
6 SHIPS WITH OR SPECIAL ACCESS TO GOVERNMENT EMPLOYEES WHO WILL EXPEDITE
7 APPLICATIONS OR ISSUE FAVORABLE DECISIONS FOR ANY REASON OTHER THAN THE
8 MERITS OF THE APPLICATION.

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

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

21 S [460-g.] 460-F. Surety requirement. Every provider shall maintain in
22 full force and effect FOR THE ENTIRE PERIOD DURING WHICH THE PROVIDER
23 PROVIDES IMMIGRANT ASSISTANCE SERVICES AND FOR ONE YEAR AFTER THE
24 PROVIDER CEASED TO DO BUSINESS AS AN IMMIGRANT ASSISTANCE SERVICE
25 PROVIDER, a bond, contract of indemnity, or irrevocable letter of cred-
26 it, payable to the people of the state of New York, in the principal
27 amount of fifty thousand dollars; provided, however, that every provider
28 that receives in excess of two hundred fifty thousand dollars in total
29 fees and other compensation for providing immigrant assistance service
30 during any twelve-month period shall maintain in full force and effect a
31 bond, contract of indemnity, or irrevocable letter of credit, payable to
32 the people of the state of New York, in the principal amount of twenty
33 percent of such total fees and compensation. Such surety shall be for
34 the benefit of any customer who does not receive a refund of fees from
35 the provider to which he or she is entitled, or is otherwise injured by
36 the provider. The attorney general on behalf of the customer or the
37 customer in his or her own name, may maintain an action against the
38 provider and the surety.

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

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

1 S 4. Section 460-h of the general business law, as added by chapter
2 463 of the laws of 2004, is amended to read as follows:

3 S 460-h. Enforcement. Upon any violation of this article, an applica-
4 tion may be made by the attorney general in the name of the people of
5 the state to a court having jurisdiction to issue an injunction, and
6 upon notice to the respondent of not fewer than five days, to enjoin and
7 restrain the continuance of the violation. If it shall appear to the
8 satisfaction of the court or justice that the defendant has, in fact,
9 violated this article, an injunction may be issued by such court or
10 justice, enjoining and restraining any further violation, without
11 requiring proof that any person has, in fact, been injured or damaged
12 thereby. In any such proceeding, the court may make allowances to the
13 attorney general as provided in paragraph six of subdivision (a) of
14 section eighty-three hundred three of the civil practice law and rules,
15 and direct restitution. Whenever the court shall determine that a
16 violation of this article has occurred, the court may impose a civil
17 penalty of not more than [seven thousand five hundred dollars] TEN THOU-
18 SAND DOLLARS for each violation.

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

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

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

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

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

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

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

3 S 94-B. OFFICE FOR NEW AMERICANS. 1. LEGISLATIVE INTENT. THE LEGISLA-
4 TURE HEREBY FINDS AND DECLARES THAT, ACCORDING TO THE 2010 CENSUS,
5 APPROXIMATELY TWENTY-TWO PERCENT OF NEW YORKERS WERE NOT BORN IN THE
6 UNITED STATES, NINE PERCENT ABOVE THE NATIONAL AVERAGE. FOR YEARS IMMI-
7 GRANTS HAVE COME TO THE UNITED STATES TO MAKE A BETTER LIFE FOR THEM-
8 SELVES. IT IS OF UTMOST IMPORTANCE TO THE STATE THAT THESE NEW AMERICANS
9 BE GIVEN THE TOOLS TO ASSIST THEM IN MAKING A BETTER LIFE FOR THEM-
10 SELVES, PARTICULARLY THROUGH PROGRAMS THAT HELP DEVELOP AND LEVERAGE
11 THEIR SKILLS AND STRENGTHEN THEIR CONNECTIONS WITH THEIR COMMUNITIES AND
12 THROUGH PROGRAMS TO REDUCE EXPLOITATION OF VULNERABLE IMMIGRANT POPU-
13 LATIONS.

14 2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERMS "NEW AMER-
15 ICAN" AND "IMMIGRANT" SHALL REFER TO NON-CITIZEN DOMICILIARIES OF NEW
16 YORK STATE WHOSE COUNTRY OF ORIGIN IS OTHER THAN THE UNITED STATES.

17 3. OFFICE FOR NEW AMERICANS; DIRECTOR. THERE IS HEREBY CREATED WITHIN
18 THE DEPARTMENT OF STATE THE OFFICE FOR NEW AMERICANS. THE SECRETARY
19 SHALL APPOINT A DIRECTOR OF THE OFFICE TO ACCOMPLISH THE RESPONSIBIL-
20 ITIES SET FORTH IN THIS SECTION. SUCH DIRECTOR SHALL RECEIVE AN ANNUAL
21 SALARY WITHIN AMOUNTS APPROPRIATED AND SHALL SERVE AT THE PLEASURE OF
22 THE SECRETARY.

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

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

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

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

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

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

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

44 (F) STRENGTHEN THE CONNECTIONS BETWEEN IMMIGRANTS AND THEIR COMMUNI-
45 TIES THROUGH CIVIC ENGAGEMENT;

46 (G) REDUCE EXPLOITATION OF IMMIGRANTS;

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

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

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

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

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

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

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

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

21 S 190.87 IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE SECOND DEGREE.

22 A PERSON IS GUILTY OF IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE
23 SECOND DEGREE WHEN, WITH INTENT TO DEFRAUD ANOTHER PERSON SEEKING IMMI-
24 GRANT ASSISTANCE SERVICES, AS DEFINED IN ARTICLE TWENTY-EIGHT-C OF THE
25 GENERAL BUSINESS LAW, FROM SUCH PERSON, HE OR SHE VIOLATES SECTION FOUR
26 HUNDRED SIXTY-D OF THE GENERAL BUSINESS LAW WITH INTENT TO OBTAIN PROP-
27 erty FROM SUCH OTHER PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTEN-
28 TATIONS OR PROMISES, AND THEREBY WRONGFULLY OBTAINS SUCH PROPERTY.

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

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

33 S 190.89 IMMIGRANT ASSISTANCE SERVICES FRAUD IN THE FIRST DEGREE.

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

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

44 S 9. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law. Effective immediately, the addition, amend-
46 ment and/or repeal of any rule or regulation necessary for the implemen-
47 tation of this act on its effective date are authorized to be made and
48 completed on or before such effective date.