STATE OF NEW YORK

8074

2017-2018 Regular Sessions

IN ASSEMBLY

May 25, 2017

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

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 460-a of the general business law, as amended by chapter 206 of the laws of 2014, is amended to read as follows:

§ 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 [~~citizenship and immigration services, the United States~~] department of homeland security, **the United States department of justice,** 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 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~~] **United States department of justice**, and the employees of such organization when acting within the scope of such employment; (c) any **tax**

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

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exempt, not-for-profit organization recognized by the [~~federal board of immigration appeals~~] United States department of justice that provides services via representatives accredited by [~~such board~~] the department to appear before the 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~~] department, and any duly accredited employee of such organization acting within the scope of his or her employment; (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; or (f) any elected official who, acting within the scope of his or her official capacity, without a fee or other payment makes inquiries on behalf of an individual to any governmental authority responsible for administering any program law or regulation affecting the non-immigrant, immigrant or citizenship status of a person.

§ 2. Section 460-b of the general business law, as amended by chapter 206 of the laws of 2014, is amended to read as follows:

§ 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. 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 immediately 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 more than three days after [~~it was signed~~] execution, or within three days after [~~it was signed~~] execution 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~~] font and shall include the following:

(a) The name, address and telephone number of the provider.

(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.

(c) A statement that original documents [~~required to be~~] submitted in connection with an application for an immigration-related benefit made

to [~~the United States citizenship and immigration services or for other certifications, benefits or services provided by government~~] **any governmental entity,** may not be retained by the [~~immigrant assistance service~~] provider for any reason, including failure of the customer to pay fees or costs or other fee dispute.

(d) **A statement that the provider shall give the customer a signed form affirming receipt of each original document, as well as a complete copy of such document, immediately upon taking possession of such original document for submission or any other purpose.**

(e) A statement that the provider shall give the customer a copy of each document prepared with the provider's assistance.

[~~(e)~~] **(f)** A statement that the customer is not required to obtain supporting documents through the immigrant assistance service provider, 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".

[~~(f)~~] **(g)** 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 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 you will get back any documents you submitted to the provider".

[~~(g)~~] **(h)** 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)~~] **(i)** of this subdivision, printed in twelve point **font** or larger [~~text~~].

[~~(h)~~] **(i)** A statement that the [~~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.

[~~(i)~~] **(j)** 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~~] **United States department of justice** to provide representation to you before [~~the 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~~] **the federal government** or any immigration [~~authorities~~] **authority** 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~~] **most recent and accurate information required by this paragraph**.

[~~(j)~~] **(k)** The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any **of your personal** information [~~about you~~] to, or [~~filing~~] **submitting** 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.

[~~(k)~~] **(l)** 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 customer's file shall be provided to the customer on demand and without fee."

[~~(l)~~] **(m)** 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 **regarding the terms of this contract**."

(n) Each contract shall contain the division of consumer's protections publicly available "Consumer Bill of Rights" on a separate page. The provider shall be responsible for providing the most recent version of the document available on the division of consumer's protection website.

§ 3. Section 460-c of the general business law, as amended by chapter 206 of the laws of 2014, is amended to read as follows:

§ 460-c. Required notices. 1. Posting of signs. Every provider shall post signs **conspicuously**, 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.

(a) One sign shall be at least eleven inches by seventeen inches, and shall contain the following in not less than sixty point [~~type~~] **font**:

"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~~] **UNITED STATES DEPARTMENT OF JUSTICE** TO PROVIDE REPRESENTATION TO YOU BEFORE THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, **THE DEPARTMENT OF JUSTICE,** 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 **in the county where the provider provides services**)." The service provider shall be responsible for providing the accurate and up-to-date phone numbers required on such sign.

(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."

2. **(a)** 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 OFFERING TO PROVIDE IMMIGRANT ASSISTANCE SERVICES IS NOT

AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE [~~BOARD OF IMMIGRATION APPEALS~~] UNITED STATES DEPARTMENT OF JUSTICE TO PROVIDE REPRESENTATION BEFORE THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE DEPARTMENT OF JUSTICE, 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."

(b) No advertisement for immigration assistance services may expressly or implicitly guarantee any particular governmental action, including but not limited to the granting of employment authorization, lawful permanent resident status or citizenship.

§ 4. Section 460-d of the general business law, as amended by chapter 206 of the laws of 2014, is amended to read as follows:

§ 460-d. Prohibited acts. No provider shall:

1. Give any legal advice concerning an immigration matter, including selecting, or advertising the customer on selecting a governmental agency form in order to apply for an immigration-related benefit, 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 provider can or will obtain special favors from or has special influence with the United States citizenship and immigration services, the United States department of Homeland Security, the executive office for Immigration review or any other governmental entity.

4. Threaten to report the customer to immigration or other authorities or threaten to undermine in any way the customer's immigration status or attempt to secure lawful status.

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.

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~~] Make a determination of, or advise about, a person's immigration status, including advising him or her on how to respond to questions on a governmental form regarding such determination.

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.

8. Fail to provide customers with copies of documents [~~filed with~~] submitted to, or received from, a governmental entity within two weeks

of submission or receipt 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.

9. Fail to provide the customer with a signed form affirming receipt of an original document, as well as a complete copy of such document, immediately upon taking possession of such original document for submission or any other purpose.

10. Make any misrepresentation or false statement, directly or indirectly.

[~~10.~~] 11. Make any guarantee or promise to a customer, unless there is a basis in fact for such representation, such representation does not relate to eligibility for an immigration-related benefit, and the guarantee or promise is in writing and attached to the service contract.

[~~11.~~] 12. 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.~~] 13. 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.~~] 14. 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.~~] 15. 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.~~]

16. Provide information to any person about his or her, or his or her family member's potential eligibility for a particular immigration-related benefit or status, or other governmental benefit, with the intent to induce such person to employ the services of such provider, regardless of whether the information is true or false.

17. Disclose any information to, or submit any forms or documents with, any third party, including immigration or other authorities, on behalf of or relating to the customer without the knowledge and consent of the customer except where such disclosure or such submission is required by law. A provider shall notify the customer in writing when such provider has disclosed any information to or submitted any form or document with immigration or other authorities when such disclosure or submission was required by law and performed without the knowledge and consent of the customer.

§ 5. Section 460-f of the general business law, as amended by chapter 206 of the laws of 2014, is amended to read as follows:

§ 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~~] a provider of immigration assistance services, 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.

§ 6. The general business law is amended by adding four new sections 460-l, 460-m, 460-n and 460-o to read as follows:

§ 460-l. Reporting. 1. In conjunction with the division of immigration policies and affairs, the director of the division of consumer protection shall prepare and submit to the division of immigration policies and affairs, the governor, the temporary president of the senate, and the speaker of the assembly a report that includes the following information related to providers of immigration assistance services:

(a) the number of complaints received related to providers of immigration assistance services, disaggregated by source and type;

(b) the number of proactive investigations that do not stem from a complaint conducted by the division;

(c) the number of violations issued, disaggregated by type;

(d) the number of the violations issued that originated with a consumer complaint;

(e) the number of violations issued as a result of a proactive investigation by the division;

(f) the length of time the division required to investigate and determine whether to issue a violation for each complaint received;

(g) a description of the division's efforts to proactively investigate providers of immigration assistance services;

(h) a description of the division's efforts to collaborate with other law enforcement agencies on investigation, enforcement, and community education efforts; and

(i) a description of changing trends in the provision of services and common fraudulent schemes.

2. Such report shall be submitted on or before October first, two thousand seventeen and every six months thereafter until the year two thousand twenty, and shall include the information required by subdivision one of this section as it relates to the six month period prior to the submission of such report.

§ 460-m. Community outreach and education. In conjunction with the mayor's office of immigrant affairs, the department shall engage in community outreach and education efforts to raise awareness about topics including but not limited to common fraudulent schemes committed by providers of immigration assistance services and the department's complaint mechanisms and services.

§ 460-n. Consumer bill of rights. a. In conjunction with the division of immigration policies and affairs, the division of consumer protection shall create a "Consumer Bill of Rights" for customers seeking assistance from providers of immigration assistance services. Such bill of rights shall be posted on the division's website in English, as well as in the top six limited English proficiency languages spoken by the population of the United States based on United States census data.

§ 460-o. Severability. If any section, subsection, sentence, clause, phrase or other portion of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which shall continue in full force and effect.

§ 7. This act shall take effect immediately.