

MICHIGAN IMMIGRATION CLERICAL ASSISTANT ACT

Act 161 of 2004

AN ACT to regulate certain transactions involved in immigration matters and the providing of services in those matters; to set standards and security requirements involving certain immigration matters and persons engaged in immigration matters; to create a list of immigration clerical assistants; to provide for certain powers and duties for certain state agencies; and to provide for remedies and penalties.

History: 2004, Act 161, Eff. Oct. 1, 2004.

The People of the State of Michigan enact:

338.3451 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan immigration clerical assistant act”.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3453 Definitions.

Sec. 3. As used in this act:

(a) “Business relationship” means a relationship with any of the following:

(i) An individual serving as a designated school official or principal designated school official as defined by the United States citizenship and immigration services, but only where acting within the scope of authority in that capacity on behalf of the designated educational institution.

(ii) An individual serving as a responsible officer or alternate responsible officer as defined by the United States department of state, but only where acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.

(iii) An individual who is regularly employed by an employer other than a sole proprietorship in a position that requires that employee to process immigration matters on behalf of and as a representative of the employer relative to employment by an employee or prospective employee only with the employer and who receives no compensation, directly or indirectly, from those employees or prospective employees.

(iv) An individual who is employed by a federal or state elected official involved in the processing of a visa application or petition on behalf of or as a representative of a constituent.

(b) “Compensation” means money, donations, property, promise of payment, or anything else of value required in exchange for a person's services.

(c) “Consumer” means a person who utilizes or seeks to utilize the services of an immigration clerical assistant.

(d) “Department” means the department of labor and economic growth.

(e) “Immigration clerical assistant” means any individual providing or offering to provide services, for compensation, relating to any immigration matter.

(f) “Immigration matter” means any matter affecting the immigrant status, nonimmigrant status, or citizenship status of any individual and includes, but is not limited to, federal or state administrative or court proceedings or the filing of accompanying documents in those proceedings, or both.

(g) “List” means the list of immigration clerical assistants established by the department.

(h) “Services” means any action taken on behalf of any consumer for the benefit of that consumer or another individual regarding the immigrant status, nonimmigrant status, or citizenship status of any consumer or other individual, and includes, but is not limited to, the following:

(i) Transcribing responses onto government agency forms on behalf of a consumer relating to an immigration matter.

(ii) Translating information from a government agency form to a language other than English and translating responses on behalf of a consumer relating to an immigration matter.

(iii) Drafting or completing an application or other paper on behalf of a consumer in an immigration matter.

(iv) Giving advice to a consumer in an immigration matter.

(i) “Solicit” means any contact with a specific consumer by an immigration clerical assistant or his or her agent, representative, or employee regarding the provision of services, for compensation, regarding an immigration matter or the provision of services. Solicit does not include letters or advertising distributed generally to persons not known to need the services of an immigration clerical assistant.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3454 Individual providing immigration services or acting as immigration clerical

assistant; placement on list required.

Sec. 4. An individual shall not provide services or offer to provide services, or act as an immigration clerical assistant, unless the individual is placed on the list established under this act or unless the individual is exempted under section 5 from placement on the list.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3455 Exemptions.

Sec. 5. The following are exempt from this act:

(a) An attorney at law licensed to practice law in any state or territory of the United States and his or her legal and other support staff working under his or her direct supervision.

(b) A law student or law school graduate not yet admitted to the bar who is supervised by an attorney licensed to practice law in any state or territory of the United States.

(c) A reputable individual who has a personal, family, or business relationship with the individual subject to the immigration matter and is engaged in an immigration matter for that individual without compensation.

(d) A nonprofit religious, charitable, social service, or similar organization recognized by the board of immigration appeals, and any individual representing such an organization who has been accredited by the board of immigration appeals.

(e) Any individual representing or acting on behalf of an organization who performs only the following services:

(i) Translating documents from a language other than English into English in an immigration matter.

(ii) Properly notarizing signatures on documents in an immigration matter.

(iii) Referring the consumer to an attorney in an immigration matter.

(iv) Taking or arranging for the taking of photographs or fingerprints in an immigration matter.

(v) Arranging for the performance of medical testing and assisting with the obtaining of such medical examination results in an immigration matter.

(vi) Conducting English language and civics courses for consumers in an immigration matter.

(vii) Conducting educational or experiential evaluations, or combinations of educational and experiential evaluations, for consumers in an immigration matter.

(f) A nonprofit religious, charitable, social service, or similar organization that provides the services listed under subdivision (e) without compensation.

(g) A translation business that meets the following criteria:

(i) Was an active member of the American translators association on September 1, 2001, and abides by and is subject to its code of ethical practices.

(ii) Is incorporated.

(iii) Keeps commercial offices in the state of Michigan.

(iv) Derives 90% of its income from the translation business.

(v) Has sales exceeding \$100,000.00 per year in the translation business.

(vi) Was engaged in the translation business on September 1, 2001.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3457 Applicant for placement on list; fee; application form; bond; updating information.

Sec. 7. (1) An immigration clerical assistant shall apply to the department for placement on the list established under section 9.

(2) An applicant for placement on the list shall pay the appropriate fee and submit in written, electronic, or other form acceptable to the department the application that shall include, at a minimum, the name, date of birth, residential and business addresses denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) The applicant shall provide in a manner acceptable to the department the name of the bonding company issuing the bond required under this act and the number or other identifying information regarding the bond.

(4) An immigration clerical assistant placed on the list shall, upon change of any of the information submitted on the application under subsections (2) and (3), update that information and submit it to the department in a manner acceptable to the department within 14 days after the change.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3459 Immigration clerical assistant list; creation; establishment; availability; fees for development, maintenance, and administration of list; failure to renew placement resulting in removal; effect.

Sec. 9. (1) There is created an immigration clerical assistant list in the department. Within 180 days after

the effective date of this act, the department shall establish the list as a fully functional program complying with the prescriptions of this section.

(2) The list shall be made available electronically or in written form to any member of the general public upon electronic or written request. The list shall include under each individual the individual's name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) In order to cover the costs of developing, maintaining, and administering the list, the department shall impose the following fees:

(a) A nonrefundable application fee of \$250.00 for any of the following:

(i) Original placement on the list for a period of 3 years.

(ii) Renewal applications received more than 60 days after the expiration date of placement on the list.

(iii) Application for reactivation of placement on the list that was removed by the department for noncompliance with this act or by an order of a court of competent jurisdiction.

(b) A nonrefundable renewal listing fee for a 3-year period in the amount of \$90.00.

(c) A nonrefundable late fee of \$20.00 for renewals received up to 60 days following the expiration date of placement on the list.

(d) A nonrefundable fee of \$20.00 for changes to a current placement on the list, including, but not limited to, address, name, or bond information.

(4) An individual who fails to renew his or her placement on the list on or before the expiration date may be removed from the list by the department and shall not provide services or act or offer to act as an immigration clerical assistant beyond the expiration date.

(5) An individual who is removed from the list for failure to renew his or her placement on the list or who is otherwise removed from the list by the department for noncompliance with this act or removed by order of a court of competent jurisdiction shall not provide services and shall not act or offer to act as an immigration clerical assistant.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3461 Charge for services.

Sec. 11. An immigration clerical assistant may charge the following for services:

(a) Not more than \$20.00 per page for translation of supporting documentation.

(b) Not more than \$10.00 per page to complete a government agency form.

(c) The amount allowed under law for notarial acts.

(d) A reasonable and fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3463 Contract requirements.

Sec. 13. (1) An immigration clerical assistant shall enter into a written contract with a consumer before any service is rendered and before accepting any compensation.

(2) The contract shall be written in English and shall include a written translation into the primary language understood by the consumer if the consumer is not a native speaker of English. The contract shall embody all the terms and conditions of the agreement to provide services, including, but not limited to, the following:

(a) The name and address of the immigration clerical assistant.

(b) The date and time of the transaction.

(c) A description of the services to be provided and the itemized cost of each service.

(d) The name and address of the bonding company or other surety that has issued the bond required under section 15.

(3) An immigration clerical assistant shall not orally amend or supplement the written contract and shall not make any statement that contradicts or is inconsistent with the terms of the written contract. A copy of the executed contract shall be provided to the consumer at the time of execution.

(4) The consumer has 72 hours from the execution of the contract to rescind the transaction. A notice of the consumer's right to rescind shall be included in the contract in English and shall be translated with substantially similar meaning into the primary language understood by the consumer in substantially the following form:

"You, the consumer, may cancel this transaction at any time prior to 72 hours following the date and time that this contract is signed by you. You may cancel this transaction, without any penalty or obligation, by writing "CANCEL" across your signature and returning a copy to the immigration clerical assistant or his/her

authorized representative.”.

(5) Upon rescission of the transaction, an immigration clerical assistant shall promptly return to the person so entitled to it any deposit, down payment, or other compensation received from or on behalf of the consumer and shall return to the consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter.

(6) The contract shall state in a prominent place, in type not smaller than 12-point font, a notice in English that shall be translated with substantially similar meaning into the primary language understood by the consumer, as follows:

“NOTICE: An immigration clerical assistant is NOT an attorney and is not authorized to provide legal services or offer legal advice of any kind.”.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3465 Corporate surety or cash bond.

Sec. 15. (1) An immigration clerical assistant shall file and maintain in force a corporate surety or cash bond conditioned upon the faithful and competent provision of services. The bond shall be in a form used by the issuer and acceptable to the department. The bond shall be in the sum of not less than \$50,000.00.

(2) The bond shall be for the benefit of a person damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or failure of the immigration clerical assistant or its agent, representative, or employee to provide services as promised. A person may bring an action upon the bond for damages as described in this subsection. The aggregate liability to all injured persons shall not exceed the sum of the bond.

(3) The surety on the bond shall have the right to cancel or terminate the bond upon giving 30 days' written notice to the person to whom it was issued and to the department and after that date shall be relieved of liability for a breach of condition occurring after the effective date of the cancellation or termination. The failure to give a new bond within 30 days after the notice to the department under this subsection operates as an automatic removal of the immigration clerical assistant's placement on the list. An action on the bond shall not be commenced after the expiration of 1 year after the effective date of the cancellation or termination of the bond.

(4) An immigration clerical assistant shall prominently display in his or her place of business the name of the bond company and the number or other identifying information regarding the bond.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3467 Prohibited conduct.

Sec. 17. (1) An immigration clerical assistant shall not do any of the following:

(a) Offer or give legal advice including, but not limited to, selecting the type of application or form to be submitted to a government agency, recommending a procedure to be followed in seeking a benefit under the immigration and nationality act, chapter 477, 66 Stat. 163, 8 USC 1101, et seq., and altering or deleting language on standard immigration forms.

(b) Engage in the unauthorized practice of law as determined by a court of competent jurisdiction.

(c) Represent that the offering or the provision of services is legal advice or legal services.

(d) Falsely represent that the offering or the provision of services is necessary.

(e) Falsely represent that the offering or the provision of services is in response to a request by or on behalf of a consumer.

(f) Represent that the life, safety, or welfare of the consumer and his or her family would be adversely affected if the services of an immigration clerical assistant are not provided.

(g) Fail to reveal a material fact regarding an immigration matter or regarding services, which fact could not be reasonably known to the consumer, the omission of which tends to mislead or deceive the consumer.

(h) Take advantage of a consumer's inability to protect his or her interests when the immigration clerical assistant knows or should reasonably know of a consumer's disability, illiteracy, or inability to understand the language of any documentation or government form.

(i) Regarding services not described in section 11, charge a consumer a price for services that is not reasonable under the circumstances.

(j) Make a false or fraudulent representation of fact or statement material to the services provided.

(k) Fail to reveal facts material to the services provided in light of representations of fact made in a positive manner.

(l) Engage in any method, act, or practice that is unfair or deceptive.

(m) Act as an intermediary between the consumer and the federal government in an immigration matter.

(n) Make any representation orally or in writing that the immigration clerical assistant guarantees or promises a specific immigration benefit or result.

(o) Represent or imply that the immigration clerical assistant will be able to obtain any special influence over, or treatment from, any government entity with respect to an immigration matter.

(p) Make a false statement or representation to the department as part of the application process for initial or renewal placement on the list.

(q) Use a term implying that the individual placed on the list is approved, certified, or licensed by the state of Michigan or the federal government.

(2) An immigration clerical assistant shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the immigration clerical assistant, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies that the person is an attorney. As used in this subsection, "literally translate" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3469 Delivery of documents and forms.

Sec. 19. (1) An immigration clerical assistant shall deliver to each consumer a copy of each document or form completed on behalf of a consumer. Each document and form executed or completed shall include the name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address of the immigration clerical assistant.

(2) An immigration clerical assistant shall retain copies of all documents and forms completed or executed on behalf of a consumer, or the individual upon whose behalf the consumer is acting, for not less than 3 years.

(3) An immigration clerical assistant shall return all original documents of the consumer, or the individual upon whose behalf the consumer is acting, and not keep them in his or her possession.

(4) An immigration clerical assistant shall promptly deliver to each consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer, or the individual upon whose behalf the consumer is acting, in any immigration matter. As used in this subsection, "promptly" means either of the following:

(a) In the case of correspondence from the agency of the federal government that requires a response within 30 days after receipt, within 7 days.

(b) In all other cases, within 14 days.

History: 2004, Act 161, Eff. Oct. 1, 2004.

338.3471 Violations; penalties; notice of noncompliance; exemption.

Sec. 21. (1) A person who violates this act is guilty of the following:

(a) In the case of a first conviction, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(b) In the case of a second or subsequent conviction, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(2) A person injured by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief or damages, or both. The court shall also grant a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(3) A person who, upon information and belief, claims a violation of this act has been committed by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief on behalf of the general public. The court shall award a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(4) The remedies and penalties in this act are cumulative and use of 1 remedy under this act does not bar the use of any remedy allowed under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or the use of any other remedy allowed under law.

(5) Notwithstanding any other provision of this section, a first violation of the list requirement of section 7 or bonding requirement of section 15, or both, shall subject the immigration clerical assistant only to a notice of noncompliance issued by the department. The department shall issue the notice of noncompliance promptly, and the notice of noncompliance shall indicate a time period for compliance not to exceed 90 days. A second or subsequent violation of either or both of the requirements described in this subsection shall subject a person to the other provisions of this section.

(6) Upon notification of any kind to the department of an individual acting as an immigration clerical assistant without being placed on the list, failure to comply with the list requirements, or of the failure to be in compliance with the bonding requirement imposed under section 15, the department shall issue a notice of noncompliance to that individual.

(7) As a precondition to the prosecution of an individual under subsection (1) for failure of an individual acting as an immigration clerical assistant to be placed on the list, failure to comply with the list requirements, or for failure to comply with the bonding requirement under section 15, the complainant shall demonstrate that the department had sent a notice of noncompliance to the person alleged to have violated this act.

(8) An immigration clerical assistant that is acting on behalf of a tax-exempt nonprofit organization under section 501(c)(3) of the internal revenue code of 1986 that applies to and is placed on the list and complies with the bonding requirement of section 15 and the service charge requirements of section 11, or an employee or volunteer of such an organization, is exempt from this section.

History: 2004, Act 161, Eff. Oct. 1, 2004.

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