

Legislation Text

File #: 140142, **Version:** 1

Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by adding definitions, duties, penalties, exceptions, prohibited acts, licensing requirements and other related items regarding provision of immigration assistance services; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9, Chapter 9-600, of The Philadelphia Code is hereby amended to add a new section as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

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CHAPTER 9-600. SERVICE AND OTHER BUSINESSES.

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§ 9-633. *Immigration Assistance Services.*

(1) Definitions. As used in this Section:

"BIA" means the Board of Immigration Appeals as determined under Title 8 (Aliens and Nationality) of the Code of Federal Regulations, as amended.

"Commissioner" means the Commissioner of the Department of Licenses and Inspections.

"Compensation" means money, property, services, promise of payment, or anything else of value.

"Department" means the Department of Licenses and Inspections.

"Employed by" means that a person is on the payroll of the employer and the employer deducts from the employee's paycheck social security and withholding taxes, or receives compensation from the employer on a commission basis or as an independent contractor.

"Immigration matter" means any proceeding, filing or action affecting the status of any person which arises under immigration and naturalization law, regulations, procedure, executive order or presidential proclamation, including those which arise under actions or jurisdiction of the United States Department of Homeland Security, the Department of Justice, the United States Department of Labor, the United States Department of Revenue, the United States Department of State or any successor agencies or department(s).

"Immigration assistance service" means the business of providing any form of assistance, for a fee or

other compensation, to any person in an “immigration matter.”

“Provider” means any person or entity, including but not limited to a corporation, partnership, limited liability company sole proprietorship or natural person, that provides immigration assistance services, but shall not include persons or entities exempt under Subsection (2).

(2) Exemptions. Nothing in this Section shall regulate any business to the extent that such regulation is prohibited by state or federal law. The requirements of this Section shall not apply to any of the following persons or entities if such person or entity can prove eligibility for an exemption as follows:

(a.) Any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law, or any person working under the supervision of such person;

(b.) Any organization recognized by the BIA that provides immigration assistance services via representatives accredited by such board to appear before the Department of Homeland Security or the Executive Office for Immigration Review, that does not charge a fee or charges nominal fees, as defined by the BIA;

(c.) Any person employed by the federal government or by the Commonwealth of Pennsylvania and authorized to provide services in an immigration matter, when acting within the scope of such employment or authority;

(d.) Any elected official who, acting within the scope of his or her official capacity, without a fee or other payment makes inquiries in an “immigration matter”;

(e.) Any City official or employee who, acting within the scope of his or her duties, without requiring a separate fee or other payment, makes inquiries in an “immigration matter” on behalf of an individual.

(3) Provider Requirements.

(a.) Registration. In addition to obtaining a commercial activity license as required under Section 19-2602, a provider shall register with the Department annually, pursuant to such registration process as may be established by the Department. A single registration shall include all locations at which a provider performs immigration-related services.

(.1) At the time of registration, a provider must sign a form designated by the Department, attesting the provider’s knowledge and consent to conduct business in accordance with the provisions of this Section, and acknowledging that any violation of the provisions of this Section by the provider may result in fines and penalties in addition to those stated in Section 19-2602, as well as cease operations orders and suspension or revocation of the provider’s commercial activity license.

(.2) At the time of registration, a provider must provide proof of a surety bond in the amount of \$50,000 in order to ensure payment of all final judgments and decrees entered against the provider for damages arising from the provision of immigration assistance services. The surety bond shall be in effect

for the entire period in which the provider provides immigration assistance services, plus one year after the provider ceases all operations.

(b) Signs. All providers shall post signs at the provider's place of business, and every location where the provider regularly meets with customers. Signs shall be posted in a conspicuous location where the signs will be visible to customers. Signs shall meet all of the following requirements:

(.1) Each sign shall be at least 11 inches by 17 inches

(.2) Notice signs shall contain the following statements:

(i) "This office is not an authorized government agency. I am not an attorney licensed to practice law or a representative accredited by the Board of Immigration Appeals. I cannot represent you before any immigration authority or agency and may not give legal advice or accept fees for legal advice. Fingerprints taken at this location will not be accepted by the United States Department of Homeland Security for any purpose. You may cancel any contract within three (3) business days and get your money back for services not performed. If you have a complaint about this business, contact the Philly311 complaint line."

(.3) Notice signs shall be designed and approved by the Department or its designee and posted in a downloadable Portable Document Format (PDF) on the Department's website. The notice signs shall contain the statements required under subsection (3) (b) (.2) in English and any other language as determined by the Department. Providers shall reproduce the PDF from the Department website, without modification, and post as required under subsection (3) (b).

(.4) A fee sign, which contains a schedule of all services and fees regularly charged, shall be posted.

(c.) Brochure. Before providing any services, a provider shall provide each customer with a brochure or handbill containing all disclosures in the form required under this section. Such brochure or handbill shall be designed and approved by the Department, and shall be posted on the Department's website in Portable Document Format. Providers shall reproduce and distribute the brochure exactly as obtained from the Department website, without modification. The brochure or handbill shall be in English and any other language as determined by the Department.

(d.) Documents. Providers shall retain copies of all documents prepared or obtained in connection with services provided to a customer for a period of three (3) years after the date a written contract is executed by the provider and the customer, whether or not the contract is subsequently cancelled.

(.1) Documents shall be retained at the provider's principal place of business and made available for confirmation of such retention by the Commissioner or his representative upon demand, during normal business hours.

(e.) Advertising. When advertising immigration assistance services by signs, pamphlets, newspapers, internet, television, radio or any other means, a provider shall post or otherwise include with the advertisement a notice in English and in every other language in which the person provides or offers to provide assistance. The notice shall be of a conspicuous size and shall state the following: "The individual offering to provide assistance to you is NOT an attorney licensed to practice law or a representative accredited by the Board of Immigration Appeals. The individual cannot represent you before any immigration authority or

agency and may not give legal advice or accept fees for legal advice.”

(.1) No advertisement for immigration assistance services shall expressly or impliedly guarantee that the licensee will achieve any particular government action, including, but not limited to, the granting of employment authorization, lawful permanent residence status, citizenship, or any other form of immigration benefit or relief.

(.2) Advertising posted at a provider’s place of business shall be subject to confirmation of compliance with subsection (3) (e) by the Commissioner or his representative, upon demand, during normal business hours.

(.3) All advertising in violation of this Section may be subject to penalties.

(f.) Providers shall comply with all reasonable and lawful requests by the Department.

(4) Legal Duties of a Provider. Each provider may only perform the following immigration assistance services:

(a.) Transcribing responses to a government agency form which is related to an immigration matter, but not advising a customer as to his or her answers on those forms;

(b.) Translating information on forms, including the instructions, to a customer and translating the customer's answers to questions posed on those forms, but not advising a customer as to his or her answers on those forms;

(c.) Securing for the customer supporting documents, requested by the customer, currently in existence, including but not limited to birth and marriage certificates, foreign passports, tax forms, police clearances and educational credentials, which may be needed to submit with government agency forms;

(d.) Translating documents from a foreign language into English;

(e.) Notarizing signatures on government agency forms, if the person performing the service is a notary public licensed in Pennsylvania;

(f.) Arranging for the performance of medical testing and the obtaining of reports of such test results;

(5.) Written Agreements.

(a.) Each provider shall execute a written contract with the customer before providing any form of assistance in an immigration matter.

(.1) The written contract shall include the following provisions:

(.a) Name, address and telephone number of the provider;

(.b) Itemization of all services to be provided and performed for the customer;

(c) Identification of all compensation and costs to be charged to the customer for the services to be performed;

(d) A statement that any originals of documents prepared, submitted or obtained may not be retained by the provider for any purpose, including payment of compensation or costs;

(e) A statement that the provider shall give the customer a copy of each document filed with a government entity;

(f) A statement that the customer is not required to obtain supporting documents through the provider, but may obtain such documents himself or herself;

(g) A statement, on the face of the contract and in print larger and more conspicuous than other print on the contract, in plain language and substantially similar to the following: "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 and may not give legal advice or accept fees for legal advice.";

(h) A statement that the customer may rescind the contract within three (3) business days, which shall be conspicuously set forth in the contract in plain language substantially similar to the following: "You have three (3) business days to cancel this contract. Notice of cancellation must be in writing. If you cancel this contract within three (3) business days, you will get back your documents and any fees that you paid.";

(i) A statement conspicuously set forth in plain language substantially similar to "The individual providing assistance to you under this contract is prohibited from disclosing any information or filing any forms or documents with immigration or other authorities without your knowledge and consent.";

(j) A statement conspicuously set forth in plain language substantially similar to "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 client on demand and without fee.";

(k) A statement that the 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. The statement should be in plain language and substantially similar to "The provider is required by law to have insurance, which is called a financial surety. If you are not given the services you agreed on, as the customer you may be able to get your money back through this insurance."

(.2) The contract shall be in a language understood by the customer, an English

language version of the contract shall also be provided.

(.3) A copy of the contract shall be provided to the customer upon the customer's execution of the contract.

(.4) Receipts shall be issued for all services provided, and any guarantee must be made in writing.

(.5) The customer has the right to cancel the contract within three (3) business days after his or her execution of the contract, without fee or penalty.

(.6) The contract may be cancelled at any time after execution. If the contract is cancelled after three (3) business days, 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 (15) days after cancellation.

(.7) If any interpreter services are provided, the contract shall include an attestation from the interpreter affirming the accuracy of the translation and the translator's certification that he or she is competent to translate from the specified foreign language into English.

(b.) Upon demand of the customer, providers must provide to the customer any documents prepared, submitted or obtained in relation to an immigration matter.

(c.) Signature-Where a form has a section for the preparer to fill out, the provider must provide his or her own information and sign the form as the preparer.

(6.) Prohibited acts. It shall be unlawful for any provider, person, or business entity engaged in the business of immigration assistance services to:

(a.) In the course of dealing with customers or prospective customers:

(.1) Make any statement that the person can or will obtain special favors from or has special influence with the United States Department of Homeland Security, the Department of Justice or any other government agency; or threaten to report the client to immigration or other authorities or undermine in any way the client's immigration status or attempt to secure lawful status;

(.2) Make any guarantee or promise to a customer, regarding outcomes in an immigration matter;

(.3) Demand or retain any compensation for service not performed or costs that are actually not incurred;

(.4) Fail to provide a customer with copies of documents filed with a governmental entity, or refuse to promptly return documents supplied by, prepared by, or paid for by the customer upon the request of the customer, or upon termination of the contract, even if there is a fee dispute between the licensee and the customer;

(.5) Give any legal advice concerning an immigration matter or otherwise engage in the practice of law, including, but not limited to, any advice regarding the selection of forms to be completed and submitted to any government agency in connection with an immigration matter;

(b.) Represent or advertise, in connection with the provision of assistance in immigration matters, the title of lawyer or attorney at law, or equivalent terms in the English language, or any other language, including, but not limited to, "notary public," "accredited representatives of the Board of Immigration Appeals" or "immigration consultant," that could reasonably cause a customer to believe that the person possesses any form of license, accreditation, or official authorization to provide advice on an immigration matter. Provided, however, that a notary public licensed in Pennsylvania may use the term "notary public" if such use is accompanied by the statement that the person is not an attorney;

(c.) State, imply, offer or otherwise represent that a person, business, agency, office or organization is authorized to provide fingerprinting services which will be accepted by the United States Department of Homeland Security for the process of DHS applications or for any other purpose;

(d.) Charge fees, directly or indirectly, for referring an individual to an attorney for any immigration matter. Provided, however, that a person may charge a fee for notarizing documents as permitted by the Pennsylvania laws regarding notary publics;

(f.) Represent that a fee may be charged, or charge a fee, for the distribution, provision or submission of any official document or form issued or promulgated by a state or federal governmental entity, or for the referral of the customer to another person or entity that is qualified to provide services or assistance which the provider will not provide;

(g.) Disclose any information to, or file any forms or documents with, immigration or other authorities without the knowledge or consent of the customer.

(h.) Refuse to comply with any reasonable and lawful request from a Department inspector acting within the scope of responsibility under this Section.

(i) Perform, or offer to perform, any immigration assistance services or other act which requires a commercial activity license under Section 19-2602 and registration under this Section without a valid commercial activity license issued by the Department and registration approved by the Department.

(j.) Fail to adhere to any provision of this Section.

(7.) Penalties and Enforcement.

(a.) Enforcement. In addition to any other penalty provided by law, any person who violates any provision of subsection (3) shall be deemed to have committed a Class III offense and be subject, in an appropriate Code enforcement proceeding, to the fines set forth in subsection 1-109(3) of the Code. Any person who violates any provision of subsections (4) through (6) shall be deemed to have committed a Class III offense, and be subject, in a proceeding under the Pennsylvania Rules of Criminal Procedure, to the fines set forth in subsection 1-109(3) of the Code or to imprisonment not exceeding ninety (90) days, or to both. Each day that a violation of any provision of this section continues shall constitute a separate and distinct offense.

Any person who violates any provision of this section shall further be liable in a private action as provided in subsection (8).

(b.) Penalties. Upon the Department's determination that a provider is in violation of subsection (3) hereof, or upon receipt of information of a provider's violation of subsections (4)-(6) hereof, the Department may take appropriate action against the individual or business entity, including:

(.1) Suspension of License. Suspension of licenses granted under Section 19-2602 for all premises operated by the individual where violations have occurred. During any period of license suspension, each and every location of the individual's business shall cease operation as an immigration assistance service provider.

(.2) Cease Operations Order. The Department may issue a Cease Operations Order for each business location operated by the individual whose license(s) has been suspended in accordance with the same procedures as set out in Section 19-2602 (4) (h), (5), (6), provided that the Cease Operations Order shall identify the prohibited operations and shall state that the applicable license has been suspended for violation(s) of the Code.

(.3) No License. No new license shall be issued for a business location posted with a Cease Operation Order or a license suspension, so long as any person under a license suspension imposed by the Department, or any member of such person's immediate family, or, in the case of a corporation, the corporation or any affiliated business entities, retain a pecuniary interest in the property at that location.

(8.) Private right of action. Any person aggrieved by any violation of this Section or any rule or regulation promulgated hereunder, may bring an action in an appropriate court against any person subject to this Section, for injunction against the violation or for such other or additional relief as may be appropriate to deter, prevent or compensate for the violation. Remedies for violation of this Ordinance shall be cumulative, and shall include costs, compensatory damages, and punitive damages, to the extent allowed by law. Any judgment obtained against a provider under this Section may be provided to the Department and provide a basis for a suspension of license and cease operations order.

SECTION 2. This ordinance shall become effective in six months.

Explanation:

Italics indicate new matter added.