



Legislation Text

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File #: Int 0746-2015, Version: \*

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Int. No. 746

By Council Members Dromm, Chin, Ferreras-Copeland, Koo, Palma, Rodriguez, Rosenthal, Mendez, Menchaca, Cabrera, Williams, Rose, King, Levine, Levin, Koslowitz, Lancman, Johnson, Barron, Lander, Miller, Reynoso, Torres, Kallos, Vacca, Eugene, Cumbo, Salamanca, Maisel, Gentile, Grodenchik, Constantinides, Treyger, Gibson, Richards, Van Bramer, Cohen and the Public Advocate (Ms. James)

A Local Law to amend the administrative code of the city of New York, in relation to preventing the unauthorized practice of immigration law.

Be it enacted by the Council as follows:

Section 1. Subchapter 14 of chapter 5 of title 20 of the administrative code of the city of New York is amended to read as follows:

Subchapter 14-a

Immigration Assistance Services

§ 20-77[0]5 Definitions. For the purpose of this subchapter, the following terms have the following meanings:

a. "Immigration assistance service" means providing any form of assistance, in the city of New York, for a fee or other compensation, to persons who have come, 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 labor, or the United States department of state.

b. "Provider" means any person, 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:

1. 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 directly under the supervision of the person admitted;

2. any tax-exempt, not-for-profit organization that provides immigration assistance services without a fee or other payment from individuals or at nominal fees as defined by the federal board of immigration appeals and any employee of such organization acting within the scope of his or her employment;

3. any organization recognized by the federal board of immigration appeals that provides immigration assistance services via representatives accredited by such board to appear before the [bureau of] United States citizenship and immigration services and/or executive office for immigration review, that does not charge a fee or charges nominal fees as defined by the board of immigration appeals;

4. any authorized agency under subdivision ten of section three hundred seventy-one of the New York state social services law and the employees of such organization when acting within the scope of such employment;

5. 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 the United States citizenship and immigration services, the United States department of homeland security, the executive office for immigration review, the United States department of labor, the United States department of state or any other government authority responsible for administering any program, law or regulation affecting the non-immigrant, immigrant or citizenship status of a person; [or]

6. any employee of the office of the mayor or an executive agency of the city of New York who, acting

within the scope of his or her capacity as an employee of the office of the mayor or an executive agency of the city of New York, without a fee or other payment makes inquires on behalf of an individual to the United States citizenship and immigration services, the United States department of homeland security, the executive office for immigration review, the United States department of labor, the United States department of state or any other government authority responsible for administering any program, law or regulation affecting the non-immigrant, immigrant or citizenship status of a person; or

7. 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 .

§ 20-77[1]6 Prohibited conduct. In the course of providing immigration assistance services, no provider may:

a. State or imply that the [person] provider can or will obtain special favors from or has special influence with the [bureau of] United States citizenship and immigration services, the United States department of homeland security, the executive office for immigration review or any other governmental entity, or threaten to report the [client] customer to immigration or other authorities or threaten to undermine in any way the [client's] customer's immigration status or attempt to secure lawful status;

b. 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;

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

d. 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," [or] "Notario Public," "Notario Publico," "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["];

e. Give any legal advice concerning an immigration matter, including selecting or advising the customer on selecting a government agency form in order to obtain a specific government or immigration benefit, or otherwise engage in the practice of law;

f. Give advice on the determination of a person's immigration status, including advising him or her as to the answers on a government form regarding such determination;

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

[g] h. 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 a referral of the customer to another person or entity that is qualified to provide services or assistance which the immigration assistance service provider will not provide;

i. 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;

j. Guarantee to expedite any immigration related governmental benefit, pursuant to an actual or fabricated relationship with or access to government employees who have the ability to expedite applications or other documentation, or issue a favorable decision for any reasons other than the merits of such application or documentation.

k. Knowingly provide misleading or false information to any person about his or her, or his or her family member's eligibility for a particular immigration benefit or status, or other government benefit, with the intent to induce such person to employ the services of the service provider;

[h] l. Disclose any information to, or file any forms or documents with, immigration or other authorities on behalf of the customer without the knowledge or consent of the customer except where required by law. A provider shall 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.

§ 20-77[2]7 Written Agreement. No immigration assistance services shall be provided until the customer has executed a written contract with the immigrant assistance service provider [who will provide such services]. The contract shall be in a language understood by the customer, either alone or with the assistance of an available interpreter, and, if that language is not English, an English language version of the contract must also be provided. A copy of the contract shall be provided to the customer upon the customer's execution of the contract. The interpreter shall provide an attestation affirming the accuracy of his or her translation, to be attached to the contract. 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. The contract may be cancelled at any time after execution. If the contract is cancelled [after] more than three days after it was signed, or within three days after it was signed (if the right to cancel without fee has been waived), the provider may retain fees for services rendered, and any additional amounts actually expended on

behalf of the customer. All other amounts must be returned to the customer within fifteen days after cancellation. The written contract shall be in plain language, in at least twelve point [type] font and shall include the following:

1. The name, address and telephone number of the provider.
2. Itemization of all services to be provided to the customer, as well as the fees and costs to be charged to the customer for each service.
3. A statement that original documents required to be submitted in connection with an application made to the [federal bureau of] United States citizenship and immigration services or for other certifications, benefits or services provided by government may not be retained by the provider for any reason, including [payment of] failure of the customer to pay fees or costs or other fee dispute.
4. A statement that the provider shall give the customer a copy of each document [filed with a governmental entity] prepared with the provider's assistance.
5. A statement that the customer is not required to obtain supporting documents through the provider, [but] and may obtain such documents himself or herself[.], along with the statement: "The U.S. government provides information on required forms and documentation for free online and by phone."
6. The statement: "You may cancel this contract at any time. You have three (3) business days to cancel this contract without fee or penalty and get back any fees that you have already paid. Notice of cancellation [must be in writing, signed by you and mailed by registered or certified] may be made by completing the cancellation form included in this contract, or otherwise notifying the provider in writing and delivering such form or notification to the provider in person or by United States mail to (specify address). If you cancel this contract [within three days,] you will get back [your] any documents [and any fees that you paid] you submitted to the provider."
7. 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 8 of this subdivision, printed in 12 point or larger font size.

8. A statement that the immigrant assistance provider has financial surety in effect for the benefit of any customer in the event that the customer is owed a refund, or is damaged by the actions of the provider, together with the name, address and telephone number of the surety.

[8] 9. The statement: "The individual providing assistance to you under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the [bureau of] United States citizenship and immigration services, the department of homeland security, the executive office for immigration review, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice.["] For a free legal referral call the Office for New Americans hotline at (phone number of the Office for New Americans), the New York State Office of the Attorney General (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 most recent and accurate information required by this paragraph.

[9] 10. The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any of your personal information to, or filing any forms or documents on your behalf with, immigration or other authorities without your knowledge and consent except as required by law." A provider shall promptly notify the customer in writing when such provider has disclosed any information to or filed any form or document with immigration or other authorities when such disclosure or filing was required by law and done without the knowledge and consent of the customer.

[10] 11. 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 [client] customer on demand and without fee."

12. 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 you may have regarding the terms of this contract."

§ 20-77[3]7.1 Posting of Signs. a. A provider must post signs conspicuously at every location where that provider meets with customers. Such sign shall state the required information in English, in addition to the six most common languages spoken in the New York city (and in every other language in which the person provides or offers to provide immigration assistance services at that location). There shall be a separate sign for each language, and each sign shall be posted in a location where it will be visible to customers. The sign must [ that] state[s] 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 BEFORE THE [BUREAU OF] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.["] FOR A FREE LEGAL REFERRAL CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (PHONE NUMBER OF THE OFFICE FOR NEW AMERICANS). TO FILE A COMPLAINT ABOUT AN IMMIGRANT ASSISTANCE SERVICE PROVIDER CALL THE OFFICE FOR NEW AMERICANS 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'S OFFICE AT (PHONE NUMBER OF THE

LOCAL DISTRICT ATTORNEY).” The service provider shall be responsible for providing the most recent and accurate information required by this section. A separate sign shall be posted in a location visible to customers in conspicuous size [type] font 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."

b. Signs required by this section must be at least 11 inches by 17 inches, in no less than sixty point font [and must be posted in a conspicuous location in English and in every other language in which immigration assistance services are provided at the location] .

§ 20-77[4]7.2 Advertisements. a. Every provider who advertises immigration assistance services by signs, pamphlets, newspapers or any other means shall post or otherwise include with the advertisement a notice in English and in the language in which the advertisement appears. The notice must be of a conspicuous size and must state: "The individual [providing] offering to provide immigrant assistance [to you] services is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation [to you] before the [bureau of] United States citizenship and immigration services, the department of homeland security, the executive office for immigration review, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice."

b. No advertisement for immigration assistance services may expressly or implicitly guarantee any particular government action, including but not limited to the granting of residency or citizenship status.

§ 20-77[5]8 Document Retention. [Every] A provider shall retain copies of all documents prepared or obtained in connection with a customer's request for assistance for a period of three years after a written contract is executed by the provider and the customer, whether or not such contract is subsequently cancelled.

§ 20-77[6]9 Surety. Unless otherwise required by New York state law, every provider must 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 ceases to do business as an immigrant assistance service provider, a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the city of New York, in the principal amount of fifty thousand dollars. Such surety shall be for the benefit of any person 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 Commissioner on behalf of the person or the person in his or her own name may maintain an action against the provider and the surety.

§ 20-77[7]9.1 Penalties. a. (1) Criminal Penalties. Any provider who violates any provision of this subchapter shall be guilty of a class A misdemeanor.

(2). Civil Penalties. Any provider of immigration assistance services who violates any provision of this subchapter or any rule or regulation promulgated hereunder shall be liable for a civil penalty of not less than [two hundred fifty] five hundred dollars nor more than [two thousand five hundred] five thousand dollars for the first violation and for each succeeding violation a civil penalty of not less than [five hundred] one thousand dollars nor more than [five] ten thousand dollars.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation that shall be returnable to the administrative tribunal of the department of consumer affairs.

§ 20-77[8]9.2. Civil Cause of Action. Any person claiming to be injured by the failure of a provider of immigration assistance services to comply with the provisions of this subchapter shall have a cause of action against such provider of immigration assistance services in any court of competent jurisdiction for any or all of the following relief:

- a. actual compensatory and punitive damages or twenty five hundred dollars, whichever is greater;
- b. injunctive and declaratory relief;

- c. attorney's fees and costs; and
- d. such other relief as a court deems appropriate.

§ 20-779.3 Rules. The commissioner may promulgate such rules and regulations as are necessary for the purposes of implementing and carrying out the provisions of this subchapter. Upon a finding by the commissioner that the requirements of state law applicable to providers of immigration services are substantially the same as the requirements of this subchapter, compliance with state law shall be deemed to be compliance with the requirements of this subchapter.

§ 20-7[80]79.4 Severability. If any section, subsection, sentence, clause, phrase or other portion of this subchapter 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.

§ 20-779.5 Reporting. a. The department shall prepare and submit to the mayor and the speaker of the city council a report that includes the following information related to immigration service providers:

1. the number of complaints received related to immigration service providers;
2. the number of violations issued disaggregated by type;
3. the number of the violations issued based on a consumer complaint;
4. the number of violations that were issued as a result of an investigation or other proactive activity by the department or its agent; and
5. the length of time it took the department to investigate and determine whether or not to issue a violation for each complaint received.

b. Such report shall be submitted on or before October 1, 2016 and every six months thereafter until the year 2020, and shall include the information required by subdivision a of this section as it relates to the six month period prior to the submission of such report.

§ 2. This local law shall take effect 120 days after enactment.

[CC]

LS#3244

[Date and time]