



Legislation Text

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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, Vallone, Espinal 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, as added by local law number 31 for the year 2004, is amended to read as follows:

Subchapter [14] 14-a

Immigration Assistance Services

- [§ 20-770] § 20-775 Definitions
- [§ 20-771] § 20-776 Prohibited Conduct
- [§ 20-772] § 20-777 Written Agreement
- [§ 20-773] § 20-777.1 Posting of Signs
- [§ 20-774] § 20-777.2 Advertisements
- [§ 20-775] § 20-778 Document Retention
- [§ 20-776] § 20-779 Surety
- [§ 20-777] § 20-779.1 Penalties
- [§ 20-778] § 20-779.2 Civil Cause of Action
- [§ 20-779] § 20-779.3 Rules
- [§ 20-780] § 20-779.4 Severability

§ 20-779.5 Reporting

§ 20-779.6 Community Outreach and Education

§ 20-779.7 Consumer Bill of Rights

[§ 20-770] § 20-775 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,] department of homeland security, the United States department of justice, 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] United States department of justice and any employee of such organization acting within the scope of

his or her employment;

3. any tax-exempt, not-for-profit organization recognized by the [federal board of immigration appeals] United States department of justice that provides immigration assistance services via representatives accredited by [such board] the department 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] department, and any duly accredited employee of such organization acting within the scope of his or her employment;

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 labor, the United States department of state or] any [other government] governmental 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 labor, the United States department of state or] any [other government] governmental 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.

[§ 20-771] § 20-776 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 citizenship and immigration services 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, or costs that are not actually incurred;

c. Fail to provide a customer 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] provider and the customer;

d. 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;

e. 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] f. Give any legal advice concerning an immigration matter, including selecting, or advising 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;

[f] g. 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;

h. 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;

[g] i. 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;

[h] j. Refer, for a fee or other compensation, a customer to an attorney or any other individual or entity that can provide services that such provider cannot provide;

k. Guarantee the expedition of any immigration-related 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;

l. 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;

m. Disclose any information to, or [file] 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 [or] 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.

[§ 20-772] § 20-777 Written Agreement. No immigration assistance services shall be provided until the customer has executed a written contract with the 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 immediately upon the customer's execution of the contract. The interpreter shall provide an attestation affirming the accuracy of the 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 execution, or within three days after 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. 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 for an immigration-related benefit made to [the federal bureau of citizenship and immigration services or for other certifications, benefits or services provided by government] any governmental entity, may not be retained by the provider for any reason, including [payment of] the customer's failure to pay fees or costs.

4. 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.

5. 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] 6. 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] 7. The statement: "You may cancel this contract at any time. You have three (3) business days to cancel this contract without 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 by 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.”

8. 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 this paragraph, printed in 12 point font or larger.

[7] 9. 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.

[8] 10. 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 bureau of citizenship and immigration services, 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 (phone number of the Office of the Attorney General), or your local district attorney or prosecutor.” The provider shall be responsible for providing the most recent and accurate information required by this paragraph.

[9] 11. The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any of your personal information 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 submitted any form or document with immigration or other authorities when such disclosure or submission was required by law and done without the knowledge and consent of the customer.

[10] 12. 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."

13. 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."

14. Each contract shall contain the department's 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 department's website.

[§ 20-773] § 20-777.1 Posting of Signs. a. A provider must post signs conspicuously at every location where that provider meets with customers. Such signs shall be made available by the department in English and in the top six limited English proficiency languages spoken by the population of New York city as determined by the department of the city planning and the office of the language services coordinator, based on United States census data. Providers shall post such signs in English and in any language in which services are offered by the provider. To the extent the department has made available a sign in a language required to be posted by such provider, such provider must use such sign. 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. Such signs shall [that states] state 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] UNITED STATES DEPARTMENT OF JUSTICE TO PROVIDE REPRESENTATION TO YOU BEFORE THE [BUREAU OF] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF HOMELAND SECURITY, THE DEPARTMENT OF JUSTICE, 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 IMMIGRATION ASSISTANCE SERVICE PROVIDER CALL NEW YORK STATE 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 DISTRICT ATTORNEY IN THE COUNTY WHERE THE PROVIDER PROVIDES SERVICES)." The 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] that 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 [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], in no less than 60 point font.

[§ 20-774] § 20-777.2 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 immigration assistance [to you] 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 [to you] before the [bureau of] United States citizenship and immigration services, the executive office for immigration review, the department of homeland security, the department of justice, 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] governmental action, including but not limited to the granting of [residency] employment authorization, lawful permanent resident status or citizenship [status].

[§ 20-775] § 20-778 Document Retention. Every 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.

[§ 20-776] § 20-779 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 immigration assistance services and for one year after the provider ceases to do business as a provider of immigration assistance services, 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.

[§ 20-777] § 20-779.1 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.

[§ 20-778] § 20-779.2 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 two thousand 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] § 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.

[§ 20-780] § 20-779.4 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. In conjunction with the mayor’s office of immigrant affairs, 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 providers of immigration assistance services:

1. the number of complaints received related to providers of immigration assistance services, disaggregated by source and type;

2. the number of proactive investigations that do not stem from a complaint conducted by the department;

3. the number of violations issued, disaggregated by type;

4. the number of the violations issued that originated with a consumer complaint;

5. the number of violations issued as a result of a proactive investigation by the department;

6. the length of time the department required to investigate and determine whether to issue a violation for each complaint received;

7. a description of the department’s efforts to proactively investigate providers of immigration assistance services;

8. a description of the department’s efforts to collaborate with other law enforcement agencies on

investigation, enforcement, and community education efforts; and

9. a description of changing trends in the provision of services and common fraudulent schemes.

b. Such report shall be submitted on or before October 1, 2017 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.

§ 20-779.6 Community Outreach and Education. a. 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.

§ 20-779.7 Consumer Bill of Rights. a. In conjunction with the mayor’s office of immigrant affairs, the department 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 department’s website in English, as well as in the top six limited English proficiency languages spoken by the population of New York city as determined by the department of the city planning and the office of the language services coordinator, based on United States census data.

§ 2. This local law takes effect 120 days after it becomes law.

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