

By: Gutierrez

H.B. No. 2856

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of immigration assistance services;
providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by
adding Chapter 59 to read as follows:

CHAPTER 59. REGULATION OF IMMIGRATION ASSISTANCE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. SHORT TITLE. This chapter may be cited as the
Immigration Assistance Services Act.

Sec. 59.002. DEFINITIONS. In this chapter:

(1) "Compensation" means money, property, services, a
promise of payment, or another thing of value.

(2) "Employed by" means that:

(A) a person is on the payroll of an employer and
the employer deducts from the person's paycheck social security and
withholding taxes; or

(B) a person receives compensation from an
employer on a commission basis or as an independent contractor.

(3) "Immigration assistance service" means any
service related to an immigration matter provided or offered to a
customer or prospective customer for compensation.

(4) "Immigration matter" means any proceeding,
filing, or action affecting the nonimmigrant, immigrant, or

1 citizenship status of a person that arises under:

2 (A) immigration and naturalization law,
3 executive order, or presidential proclamation of the United States
4 or any foreign country; or

5 (B) an action of the United States Department of
6 Labor, United States Department of State, United States Department
7 of Homeland Security, or United States Department of Justice.

8 Sec. 59.003. APPLICABILITY OF CHAPTER. This chapter does
9 not apply to:

10 (1) an attorney licensed to practice law and in good
11 standing in:

12 (A) this state; or

13 (B) another state of the United States or a
14 foreign country, if the attorney is acting with the approval of a
15 judge having jurisdiction over the matter;

16 (2) a legal intern, clerk, paralegal, or person in a
17 similar position:

18 (A) employed by and under the direct supervision
19 of a licensed attorney who meets the requirements of Subdivision
20 (1); and

21 (B) providing immigration assistance services in
22 the course of employment;

23 (3) a nonprofit organization recognized by the Board
24 of Immigration Appeals under 8 C.F.R. Section 292.2(a) or an
25 employee of an organization accredited under 8 C.F.R. Section
26 292.2(d); or

27 (4) an organization that employs or desires to employ

1 an immigrant, if the organization or the organization's employees
2 or agents provide advice or assistance in immigration matters to
3 immigrant employees or potential employees, and the advice or
4 assistance is provided without compensation from the individual who
5 receives the advice or assistance.

6 Sec. 59.004. EFFECT ON FEDERAL LAW. Nothing in this chapter
7 may be construed to impose a regulation that is prohibited or
8 preempted by federal law.

9 SUBCHAPTER B. IMMIGRATION ASSISTANCE SERVICES

10 Sec. 59.051. IMMIGRATION ASSISTANCE SERVICES A PERSON MAY
11 PROVIDE. A person who provides immigration assistance services may
12 only:

13 (1) complete a government agency form that is
14 requested by the customer and appropriate to the customer's needs,
15 if the completion of the form does not involve a legal judgment;

16 (2) transcribe a response to a government agency form
17 that is related to an immigration matter;

18 (3) translate information on a form to a customer and
19 translate the customer's answers to questions asked on the form;

20 (4) obtain for the customer supporting documents
21 currently in existence, including a birth or marriage certificate,
22 that may be needed for submission with a government agency form;

23 (5) translate a document from a foreign language into
24 English;

25 (6) notarize a signature on a government agency form,
26 if the person performing the service is a notary public:

27 (A) commissioned in this state; and

1 (B) lawfully present in the United States;

2 (7) make a referral, without a fee, to an attorney
3 authorized to undertake legal representation for a person in an
4 immigration matter;

5 (8) prepare or arrange for the preparation of
6 photographs and fingerprints;

7 (9) arrange for the performance of medical testing,
8 including x-rays and AIDS tests, and obtain reports of the test
9 results;

10 (10) conduct English language and civics courses; and

11 (11) perform any other service that the secretary of
12 state determines by rule may be appropriately performed by the
13 person in accordance with the purposes of this chapter.

14 Sec. 59.052. PROHIBITED SERVICES. (a) A person who
15 provides immigration assistance services may not:

16 (1) provide legal advice, recommend a specific course
17 of legal action, or provide any other assistance that requires
18 legal analysis, legal judgment, or interpretation of the law;

19 (2) refuse to return documents supplied by, prepared
20 on behalf of, or paid for by the customer if the customer requests
21 the return of the documents, regardless of whether there is a fee
22 dispute between the person and the customer;

23 (3) represent or advertise that the person is a
24 "notary public" or "immigration consultant" or use any other title
25 or credential that would cause a reasonable customer to believe
26 that the person possesses special professional skills or is
27 authorized to provide advice on an immigration matter;

1 (4) make a misrepresentation or false statement,
2 directly or indirectly, to influence, persuade, or induce
3 patronage; or

4 (5) advise a customer as to the customer's answers on a
5 government agency form related to an immigration matter.

6 (b) Notwithstanding Subsection (a)(3), a certified notary
7 public may use the term "notary public" if the use is accompanied by
8 a statement that the person is not an attorney.

9 Sec. 59.053. REGISTRATION OF PROVIDERS REQUIRED. (a) A
10 person who provides immigration assistance services shall register
11 with the secretary of state.

12 (b) The secretary of state shall adopt:

13 (1) a registration form to implement this section; and

14 (2) rules to administer this section.

15 Sec. 59.054. BOND REQUIRED. A person who provides
16 immigration assistance services shall maintain a corporate surety
17 bond or other security acceptable to the secretary of state that is:

18 (1) in the amount of \$10,000;

19 (2) payable to the secretary; and

20 (3) for the benefit of a party who suffers damages
21 caused by the failure of the person to fulfill obligations related
22 to this chapter.

23 SUBCHAPTER C. ADVERTISEMENT PROVISIONS

24 Sec. 59.101. SIGNS REQUIRED AT PLACE OF BUSINESS. (a) A
25 person who provides or offers to provide immigration assistance
26 services shall post at the person's place of business signs at least
27 12 inches by 17 inches in size and containing the following

1 statement:

2 "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT
3 GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

4 (b) The signs required by Subsection (a) must be in English
5 and in every other language in which the person provides or offers
6 to provide immigration assistance services. Each statement
7 translated into a different language must be on a separate sign.

8 (c) The person shall post the signs required by this section
9 at a location where the signs will be visible to customers.

10 Sec. 59.102. RADIO, TELEVISION, OR WRITTEN ADVERTISEMENTS.

11 (a) A person who advertises immigration assistance services in a
12 language other than English by radio, television, signs, pamphlets,
13 newspapers, business cards, stationery, letterhead, or other
14 written communication shall include in the advertisement the
15 following notice in English and the language used by the
16 advertisement:

17 "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT
18 GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

19 (b) Subsection (a) does not apply to a single desk plaque.

20 (c) If the advertisement is by radio or television, the
21 statement required by Subsection (a) may be modified but must
22 include substantially the same message.

23 (d) If in writing, the statement required by Subsection (a)
24 must be printed in a conspicuous size.

25 Sec. 59.103. TRANSLATING CERTAIN TITLES PROHIBITED. A
26 person who provides or offers to provide immigration assistance
27 services may not, in any written material, literally translate from

1 English into another language:

2 (1) notary public;

3 (2) notary;

4 (3) licensed;

5 (4) attorney;

6 (5) lawyer; or

7 (6) another term that implies the person is an
8 attorney.

9 SUBCHAPTER D. REMEDIES AND OFFENSES

10 Sec. 59.151. CIVIL PENALTY. (a) A person who violates this
11 chapter is liable to this state for a civil penalty in an amount not
12 to exceed \$1,000 for each violation. The attorney general or the
13 prosecuting attorney in the county in which the violation occurs
14 may bring suit to recover the civil penalty imposed under this
15 section.

16 (b) A penalty collected under this section does not preempt
17 or preclude a civil or criminal penalty under other law.

18 Sec. 59.152. CRIMINAL PENALTY. (a) A person commits an
19 offense if the person violates a provision of this chapter.

20 (b) An offense under this section is a Class B misdemeanor,
21 except that the offense is a Class A misdemeanor if it is shown on
22 the trial of the offense that:

23 (1) the person has previously been convicted under
24 this section; and

25 (2) the instant offense occurred before the fifth
26 anniversary of the conviction for the previous offense.

27 SECTION 2. This Act takes effect September 1, 2013.