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BILL



ANALYSIS

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House Bill 4983 (Substitute H-1 as passed by the House)
House Bill 4984 (Substitute H-2 as passed by the House)
Sponsor: Representative Steve Tobocman (H.B. 4983)
Representative Bill Huizenga (H.B. 4984)
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 5-17-04

CONTENT

House Bill 4983 (H-1) would create the "Michigan Immigration Clerical Assistant Act" to do all of the following:

- Create an immigration clerical assistant registry within the Department of Labor and Economic Development (DLEG).
- Require DLEG to establish a registration program and impose fees to cover the registry's costs.
- Require an immigration clerical assistant to apply to DLEG for inclusion in the registry.
- Exempt certain individuals and entities from the proposed Act.
- Allow an immigration clerical assistant to charge certain fees.
- Require an immigration clerical assistant to enter into a written contract with a consumer before rendering any service or accepting compensation.
- Require an immigration clerical assistant to file and maintain a corporate surety or cash bond of at least \$50,000.
- Prohibit an immigration clerical assistant from taking certain actions.
- Specify certain requirements pertaining to documents or forms that an immigration clerical assistant completed or received on behalf of a consumer.
- Specify criminal, civil, and administrative penalties for violations of the proposed Act.

House Bill 4984 (H-2) would amend the Code of Criminal Procedure to include in the sentencing guidelines a subsequent offense violation of the proposed "Michigan Immigration Clerical Assistant Act". That offense would be a Class G felony against the public trust, with a statutory maximum sentence of two years' imprisonment.

House Bill 4984 (H-2) is tie-barred to House Bill 4983. Both bills would take effect on October 1, 2004.

A more detailed description of House Bill 4983 (H-1) follows.

Definitions

"Immigration clerical assistant" would mean an individual providing or offering to provide services, for compensation, relating to any immigration matter. "Immigration matter" would mean any matter affecting an individual's immigrant status, nonimmigrant status, or citizenship status, including Federal or State administrative or court proceedings or the filing of accompanying documents in those proceedings, or both.

"Services" would mean any action taken for the benefit of an individual regarding his or her immigrant status, nonimmigrant status, or citizenship status, including all of the following:

- Transcribing responses onto government agency forms on behalf of a consumer relating to an immigration matter.
- 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.
- Drafting or completing an application or other paper on behalf of a consumer in an immigration matter.
- Giving advice to a consumer in an immigration matter.

"Consumer" would mean a person who used or sought to use the services of a immigration clerical assistant.

Immigration Clerical Assistant Registry

Creation. The bill would create an immigration clerical assistant registry in DLEG. Within 90 days of the bill's effective date, the Department would have to establish the registry as a fully functional program in compliance with the bill.

The registry would have to be made available electronically or in written form to the general public, upon electronic or written request. The registry would have to include each individual registrant's name, address, telephone number, fax number, and e-mail or website address, and the name of an individual who could be contacted personally.

Administration Fees. To cover the costs of developing, maintaining, and administering the registry, DLEG would have to impose the following fees:

- A \$250 application fee for original placement on the registry, a renewal application received more than 60 days after a registry listing expired, and application to reactivate a registry listing that DLEG had removed for noncompliance with the proposed Act or by a court order.
- A \$90 fee for a three-year registry renewal.
- A \$20 late fee for a renewal received up to 60 days after a registry listing expired.
- A \$20 fee for changes to a current registry listing, including changes to an address, a name, or bond information.

Application. An immigrant clerical assistant would have to apply to DLEG for inclusion in the registry. An applicant would have to pay the appropriate fee and submit an application in written, electronic, or other form acceptable to DLEG. The application would have to include at least the applicant's name, date of birth, address, telephone number, fax number, and e-mail or website address, as well as the name of an individual who could be contacted personally.

An applicant also would have to provide, in a manner acceptable to DLEG, the name of the bonding company issuing the required bond and the number or other identifying information regarding the bond.

Upon a change of any of the information submitted on an application, an immigration clerical assistant would have to update that information and submit it to DLEG in a manner acceptable to the Department.

Exemptions

The following would be exempt from the proposed Act:

- An attorney at law, licensed to practice in any U.S. state or territory, and his or her legal and other support staff working under his or her direct supervision.
- A law student or law school graduate not yet admitted to the bar, who was supervised by an attorney licensed to practice in any U.S. state or territory.
- A reputable individual who had a personal, family, or business relationship with the individual subject to the immigration matter and who was engaged in an immigration matter for that individual without compensation.
- A nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals, and any individual representing such an organization who had been accredited by the Board.

The bill also would exempt any individual representing or acting on behalf of an organization, who performed only the following services:

- Translating documents from a language other than English into English, in an immigration matter.

- Properly notarizing signatures on documents in an immigration matter.
- Referring the consumer to an attorney in an immigration matter.
- Taking or arranging for the taking of photographs or fingerprints in an immigration matter.
- Arranging for medical testing and assisting with obtaining medical examination results in an immigration matter.
- Conducting English language and civics courses for consumers in an immigration matter.
- Conducting educational and/or experiential evaluations for consumers in an immigration matter.

Fees for Service

Under the bill, an immigration clerical assistant could charge the following fees for services:

- Up to \$20 per page to translate supporting documentation.
- Up to \$10 per page to complete a government agency form.
- The amount allowed under law for notarial acts.
- A reasonable and fair fee for other services that included photocopying, mailing, and telephone calls.

Contract

An immigration clerical assistant would have to enter into a written contract with a consumer before any service was rendered and before accepting any compensation. The contract would have to be written in English and include a written translation into the primary language understood by the consumer, if his or her native language were not English.

The contract would have to embody all terms and conditions of the agreement to provide services, including the following:

- The immigration clerical assistant's name and address.
- The date and time of the transaction.
- A description of the services to be provided and the itemized cost of each.
- The name and address of the bonding company or other surety that issued the bond required under the bill.

An immigration clerical assistant could not orally amend or supplement the written contract or make any statement that contradicted or was inconsistent with its terms. A copy of the executed contract would have to be provided to the consumer at the time of execution.

The consumer would have 72 hours from the execution of the contract to rescind it. A notice of his or her right to rescind would have to be included in the contract, in English, and would have to be translated with substantially similar meaning into the primary language understood by the consumer, in a form specified by the bill. Upon rescission, an immigration clerical assistant promptly would have to return to the person entitled to it any deposit, down payment, or other compensation received from or on behalf of the consumer.

The contract would have to state the following: "NOTICE: An immigration clerical assistant is NOT an attorney and is not authorized to provide legal services or offer legal advice of any kind." The notice would have to be in a prominent place, in at least a 12-point font, in English, and translated with substantially similar meaning into the primary language understood by the consumer.

Bonding

An immigration clerical assistant would have to file and maintain in force a corporate surety or cash bond conditioned upon the faithful and competent provision of services. The bond would have to be in the sum of at least \$50,000. It would have to be in a form used by the issuer and acceptable to DLEG.

The bond would have to be for the benefit of a person damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or the failure of the immigration clerical assistant or his or her agent, representative, or employee to provide promised services. A person could bring an action for damages upon the bond. The aggregate liability to all injured parties could not exceed the bond's sum.

The bond's surety would 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 DLEG. After that date,

the surety would be relieved of liability for a breach of condition that occurred after the effective date of the cancellation or termination. Failure to give a new bond within 30 days after notice to DLEG would operate as an automatic suspension of the immigration clerical assistant's listing on the registry. An action on the bond could not begin after one year following the effective date of the bond's cancellation or termination.

An immigration clerical assistant would have to display prominently in his or her place of business the bond company's name and the number or other identifying information regarding the bond.

Prohibitions

The bill would prohibit an immigration clerical assistant from doing any of the following:

- Offering or giving legal advice, including 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 Federal Immigration and Nationality Act, or altering or deleting language on standard immigration forms.
- Engaging in the unauthorized practice of law, as determined by a court of competent jurisdiction.
- Representing that the offering or the provision of services was legal advice or legal services.
- Falsely representing that the offering or the provision of services was necessary or was in response to a request by or on behalf of a consumer.
- Representing that the life, safety, or welfare of the consumer and his or her family would be adversely affected if the immigration clerical assistant's services were not provided.
- Failing to reveal a material fact regarding an immigration matter or regarding services, that the consumer could not reasonably know, whose omission tended to mislead or deceive the consumer.
- Taking advantage of a consumer's inability to protect his or her interests when the immigration clerical assistant knew or reasonably should have known of a consumer's disability, illiteracy, or

inability to understand the language of any documentation or government form.

- Charging a consumer a price for services that was not reasonable under the circumstances, regarding services not exempt from the proposed Act.
- Making a false or fraudulent representation of fact or statement material to the services provided.
- Failing to reveal facts material to the services provided in light of representations of fact made in a positive manner.
- Engaging in any unfair or deceptive method, act, or practice.
- Acting as an intermediary between the consumer and the Federal government in an immigration matter.
- Making any oral or written representation that the immigration clerical assistant guaranteed or promised a specific immigration benefit or result.
- Representing or implying that the immigration clerical assistant would be able to obtain any special influence over, or treatment from, any governmental entity with respect to an immigration matter.

An immigration clerical assistant could not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the clerical assistant's role, "literally translate" from English into another language terms or titles including notary public, notary, licensed, attorney, lawyer, or any other term that implied that the person was an attorney. ("Literally translate" would mean the translation of a word or phrase without regard to its true meaning in the language that was being translated.)

Documents

An immigration clerical assistant would have to deliver to each consumer a copy of each document or form completed on the consumer's behalf. Each document and form executed or completed would have to include the immigration clerical assistant's name and business address. An immigration clerical assistant would have to retain for at least three years copies of all documents and forms that he or she completed on behalf of a consumer.

An immigration clerical assistant would have to return a consumer's original documents and could not keep them in his or her possession. An immigration clerical assistant also would have to deliver promptly to each consumer all original documents including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter. ("Promptly" would mean within seven days, in the case of correspondence from an agency of the Federal government that required a response within 30 days. In all other cases, "promptly" would mean within 14 days.)

Penalties

In the case of a first conviction, a violation of the proposed Act would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$1,000, or both. A second or subsequent offense would be a felony punishable by up to two years' imprisonment, a maximum fine of \$10,000, or both.

A person injured by an immigration clerical assistant could bring an action in a court of competent jurisdiction for equitable relief or damages, or both. If a person claimed, upon information and belief, that an immigration clerical assistant had violated the proposed Act, he or she could bring an action for equitable relief on behalf of the general public. In either case, the court would have to grant a prevailing plaintiff reasonable attorney fees and costs.

The bill states that the remedies and penalties in the proposed Act would be cumulative and the use of one remedy would not bar the use of any remedy allowed under the Michigan Consumer Protection Act or the use of any other remedy allowed under law.

Notwithstanding any other penalty specified in the bill, a first violation of the proposed registry or bonding requirements, or both, would subject the immigration clerical assistant to a cease and desist order issued by DLEG. The Department would have to issue the order promptly, and it would have to indicate a time for compliance not to exceed 90 days. A second or subsequent

violation would subject a person to the bill's other provisions regarding violations.

The bill's penalty provisions would not apply to an immigration clerical assistant who was acting on behalf of a tax-exempt, nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, who applied to and was entered into the registry and complied with the bonding and service charge requirements, or an employee or volunteer or such an organization.

MCL 777.13p (H.B. 4984)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

According to the Department of Labor and Economic Growth, there are an estimated 500 groups of individuals providing these services. If each one registered and paid the fee, the estimated revenue would be \$125,000 for the first year and \$15,000 each subsequent year if the number of providers is correct. These funds would be used to create and administer the registry.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor and felony offenses. Local units incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State incurs the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any revenue raised due to additional penal fines.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.