CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5023

Chapter 244, Laws of 2011

62nd Legislature
2011 Regular Session

NONLEGAL IMMIGRATION-RELATED SERVICES

EFFECTIVE DATE: 10/20/11

Passed by the Senate April 21, 2011
YEAS 42   NAYS 4

BRAD OWEN
President of the Senate

Passed by the House April 7, 2011
YEAS 92   NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5023 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

Approved May 3, 2011, 2:55 p.m.

FILED
May 4, 2011

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington

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

Sec. 1. RCW 19.154.010 and 1989 c 117 s 1 are each amended to read as follows:

The legislature finds and declares that the practice by nonlawyers and other unauthorized persons of providing legal advice and legal services to others in immigration matters substantially affects the public interest. The practice of immigration assistants having a significant impact on the residents of the state of Washington) nonlawyers and other unauthorized persons providing immigration-related legal advice and legal services for compensation may impact the ability of their customers to reside and work within the United States and to establish and maintain stable families and business relationships. The
legislature further finds and declares that the previous scheme for regulating the behavior of nonlawyers and other unauthorized persons who provide immigration-related services is inadequate to address the level of unfair and deceptive practices that exists in the marketplace and often contributes to the unauthorized practice of law. It is the intent of the legislature, through this act, to ((establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence)) prohibit nonlawyers and other unauthorized persons from providing immigration-related services that constitute the practice of law.

Sec. 2. RCW 19.154.020 and 1989 c 117 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Immigration assistant" means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:

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

(b) Translating a person's answer to questions posed on those forms;

(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;

(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.

(2) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person ((which arises)) arising under immigration and naturalization law, executive order, or presidential proclamation, or ((which arises under)) pursuant to any action of the United States citizenship and immigration ((and naturalization)) services, the United States department of labor, ((or)) the United States department of state, the United States department of homeland security, the board of immigration appeals, or any other entity or agency having jurisdiction over immigration law.
(2) "Compensation" means money, property, or anything else of value.

(3) "Practice of law" has the definition given to it by the supreme court of Washington whether by rule or decision, and includes all exceptions and exclusions to that definition currently in place or hereafter created, whether by rule or decision.

Sec. 3. RCW 19.154.060 and 1989 c 117 s 6 are each amended to read as follows:

((Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in RCW 19.154.020.)) (1) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the practice of law in an immigration matter for compensation.

(2) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, for compensation:

(a) Advising or assisting another person in determining the person's legal or illegal status for the purpose of an immigration matter;

(b) Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

(c) Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

(d) Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

(e) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(f) Charging a fee for referring another to a person licensed to practice law;

(g) Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.
(3) Persons, other than those holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, regardless of whether compensation is sought:

(a) Representing, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law;

(b) Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(4)(a) The prohibitions of subsections (1) through (3) of this section shall not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter.

(b) This section does not prohibit a person from offering translation services, regardless of whether compensation is sought. Translating words contained on a government form from English to another language and translating a person's words from another language to English does not constitute the unauthorized practice of law.

(5) In addition to complying with the prohibitions of subsections (1) through (3) of this section, persons licensed as a notary public under chapter 42.44 RCW who do not hold an active license to practice law issued by the Washington state bar association shall not use the term notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the areas of immigration law, when advertising notary public services in the conduct of their business. A violation of any provision of this chapter by a person licensed as a notary public under chapter 42.44 RCW who is not subject to the provisions of this chapter is a violation of chapter 34.4D RCW and is subject to similar penalties.
notary public under chapter 42.44 RCW shall constitute unprofessional conduct under the uniform regulation of business and professions act, chapter 18.235 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 19.154 RCW to read as follows:

Persons who are not licensed to practice law in this state or who are not otherwise permitted to represent others under federal law in an immigration matter may engage in the following services for compensation:

(1) Translate words on a government form that the person seeking services presents to the person providing translation services;

(2) Secure existing documents for the person seeking services. Existing documents include, for example, birth and marriage certificates; and

(3) Offer other immigration related services that are not prohibited under this chapter or any other provision of law or do not constitute the practice of law.

Sec. 5. RCW 19.154.090 and 1989 c 117 s 9 are each amended to read as follows:

(1) The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020.

(2) In addition to all remedies available in chapter 19.86 RCW, a person injured by a violation of this chapter may bring a civil action to recover the actual damages proximately caused by a violation of this chapter, or one thousand dollars, whichever is greater.

Sec. 6. RCW 42.44.030 and 2002 c 86 s 287 are each amended to read as follows:

(1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may deny appointment as a notary public to any person based on the following conduct, acts, or conditions:

((1)) (a) Has had disciplinary action taken against any professional license in this or any other state; ((or
(2+)  (b) Has engaged in official misconduct as defined in RCW 42.44.160(1), whether or not criminal penalties resulted; or
    (c) Has violated any of the provisions of chapter 19.154 RCW.
(2) The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington.

NEW SECTION. Sec. 7. A new section is added to chapter 19.154 RCW to read as follows:
Nothing in this chapter shall apply to or regulate any business to the extent such regulation is prohibited or preempted by federal law.

Sec. 8. RCW 19.154.900 and 1989 c 117 s 11 are each amended to read as follows:
This chapter shall be known and cited as the "immigration services fraud prevention act."

NEW SECTION. Sec. 9. (1)(a) The legislature recognizes that immigrants in Washington need legal services to assist them in immigration matters, and it is difficult for existing organizations to meet those needs because of high case loads and limited resources.
(b) The legislature also recognizes that the difference between offering nonlegal services and offering legal services in immigration matters is sometimes difficult to distinguish. Not understanding or recognizing the distinction between nonlegal services and legal services in immigration matters can result in a person engaging in the unauthorized practice of law and can result in irreparable consequences for immigrants who seek assistance.
(2) Therefore, the legislature respectfully requests that the supreme court's practice of law board, within available resources, evaluate the following:
(a) The specific services nonattorneys may provide to immigrants that do not rise to the level of the practice of law in immigration matters;
(b) The level of access to and the quality of nonlegal and legal
services immigrants have and the ways in which access and quality can be improved;

(c) The level of need immigrants have for nonlegal services compared to the need for legal services in immigration matters.

(3) A report of the board's findings and recommendations must be presented to the legislature no later than December 1, 2011.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) RCW 19.154.030 (Exemptions) and 1989 c 117 s 3;
(2) RCW 19.154.040 (Registration required) and 1989 c 117 s 4;
(3) RCW 19.154.050 (Change of address) and 1989 c 117 s 5;
(4) RCW 19.154.070 (Written contract--Requirements--Right to rescind) and 1989 c 117 s 7;
(5) RCW 19.154.080 (Prohibited activities) and 1989 c 117 s 8; and
(6) RCW 19.154.902 (Effective date--1989 c 117) and 1989 c 117 s 15.

NEW SECTION. Sec. 11. This act takes effect one hundred eighty days after final adjournment of the legislative session in which it is enacted.

Passed by the Senate April 21, 2011.
Passed by the House April 7, 2011.
Approved by the Governor May 3, 2011.
Filed in Office of Secretary of State May 4, 2011.