

SENATE BILL REPORT

SB 5023

As Reported by Senate Committee On:
Judiciary, February 4, 2011

Title: An act relating to nonlegal immigration-related services.

Brief Description: Addressing nonlegal immigration-related services.

Sponsors: Senators Prentice, McAuliffe, Litzow, Shin, Kline, Pflug, Fraser, Chase and Rockefeller; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 1/14/11, 2/04/11 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5023 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Hargrove, Kohl-Welles and Regala.

Minority Report: Do not pass.

Signed by Senator Carrell.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Juliana Roe (786-7438)

Background: The Immigration Assistant Practices Act (IAPA) requires that those who charge money to assist individuals with immigration matters must register as immigration assistants with the Secretary of State unless that person is a licensed attorney. Immigration assistants may complete forms on behalf of another, but are prohibited from selecting the forms or selecting responses on the individual's behalf. Further, immigration assistants are not required to have specific training.

In many Spanish speaking countries the term notario publico means attorney, but translates into English as notary public. The same translation problem occurs with other languages too. Persons seeking immigration help often seek assistance from persons advertised as notario publicos because they believe these people are attorneys when in reality they are not. Often

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these notario publicos are improperly providing legal advice that delays or ruins the individual's chances of obtaining legal status.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): The term immigration assistant is removed. A definition for the practice of law is provided.

It is clarified that 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. They are also prohibited from engaging in the following acts or practices for compensation: (1) selecting, assisting another in selecting, or advising another in how to answer questions on a government agency form related to immigration matters; (2) selecting, assisting another in selecting, or advising another in selecting a benefit, visa, or program to apply for in immigration matters; (3) soliciting to prepare documents for another in a judicial or administrative proceeding in an immigration matter; (4) explaining, advising, or otherwise interpreting the meaning or intent of a question on a government form in an immigration matter; (5) charging a fee for obtaining or providing a paper or electronic copy of a government form in an immigration matter; (6) charging a fee for referring someone to a licensed attorney; and (7) drafting, writing, or creating documents to support or establish a benefit for another in an immigration matter.

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 also prohibited from engaging in the following acts regardless of whether compensation is sought: (1) representing that he or she is a lawyer, notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title that implies that the person is a professional with legal skills in the area of immigration law; and (2) representing, in any language, in any manner, that he or she can provide services in an immigration matter, if such services would constitute the practice of law.

A violation of any of these prohibitions is considered unprofessional conduct.

Persons injured by a violation of the the IAPA may bring a civil action to recover either \$1,000 or actual damages caused by a violation, whichever is greater.

The act is renamed the Immigration Services Fraud Prevention Act.

The act takes effect 180 days after final adjournment of the legislative session in which it is enacted.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute as Passed Committee): The "practice of law" is defined as 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.

The category of "persons, other than those with active bar licenses" is changed to "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."

The act takes effect 180 days after final adjournment of the legislative session in which it is enacted.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: One hundred eighty days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:
PRO: We want to make sure people get their money's worth when they receive immigration assistance, and not receive bad advice. The immigration population is vulnerable and there is a fine line between non-legal clerical services, and practices that constitute the practice of law. The act was originally designed to protect consumers. However, it has come time for it to be modernized as consumers have not been fully protected.

The unauthorized practice of law has hurt consumers as people have provided services that they are not qualified to provide. Conforming the current rules with the federal rules is a step in the right direction.

This bill is a step in the right direction, however there may be a lack of alternatives to using immigration attorneys. One amendment that might be helpful would be to reinstate paragraph one of section seven of the bill, rather than repeal it.

CON: This bill is nothing more than a professional class lynching. Not one of the 500 immigration assistants were notified about this bill. This bill assumes that all immigration assistants make mistakes and that none are made by attorneys. This bill isn't what is needed. What is needed is stabilization, education, monitoring, testing, and training of immigration assistants. It is a complicated area of the law and many states require attorneys to specialize in the area before practicing in the area.

Persons Testifying: PRO: Sen. Prentice, prime sponsor; Pedro Bernal, Attorney General's Office; Bonnie Stern Wasser, American Immigration Lawyers Association; Toby Guevin, One America.

CON: John Ching, citizen; Raymundo Olivas, Multiservicios.