

# Immigration Assistance Services

New York enacted A07137 into law in 2004. A07137 is reported to be the first to establish standards for immigration consultants. A press release from New York Governor Pataki's office reports "Throughout the State, immigration consultants often are also notaries licensed by the State to witness signatures on legal documents. However, in Spanish-speaking areas, they often call themselves 'notarios,' which is the Spanish word for 'expert attorney.' In enforcing this new law, State officials will be determining whether it will be legal for notaries to call themselves 'notarios'. This new law will protect immigrants from being exploited by establishing tough new standards and protections to effectively regulate the activities of those who would try and take advantage of them."

In addition, the press release states that New York A07137 "will complement a new educational initiative Governor Pataki unveiled in April of 2004 to help protect immigrants from scam artists posing as immigration consultants. The new program, which is a joint initiative between the New York State Consumer Protection Board and the Governor's Citizenship Unit, is an educational campaign designed to raise awareness among immigrant communities about scam artists who prey on immigrants trying to obtain citizenship."

The SSL draft Act in this volume is based on New York A07137. This draft Act defines "Immigration Assistance Services" and establishes regulations for people and organizations that provide such services for a fee. For example, the Act prohibits immigration service providers from providing such services to a customer without a contract that the customer can understand. The Act enables customers to break such contracts within 3 days of signing such contracts and to get back any money that the customers have paid on the contract. This Act also requires immigration assistance providers to post signs that explain that the assistance provider is not an attorney or the individual providing assistance under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation before the federal Bureau of Citizenship and Immigration services, the federal Department of Labor, the Department of State or any immigration authorities. It also requires a separate sign that lists the fees the provider charges for immigration services.

Submitted as:

New York

[A07137](#)

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as "An Act to Regulate Immigration  
2 Assistance Services."

3

4           Section 2. [*Definitions.*] For the purpose of this Act:

5           1. "Immigrant assistance service" means providing assistance, for a fee or other  
6 compensation, to persons who have, or plan to, come to the United States from a foreign  
7 country, or their representatives, in relation to any proceeding, filing or action affecting the  
8 non-immigrant, immigrant or citizenship status of a person which arises under the

9 immigration and nationality law, executive order or presidential proclamation, or which  
10 arises under actions or regulations of the United States Bureau of Citizenship and  
11 Immigration Services, the United States Department of Labor, or the United States  
12 Department of State.

13 2. "Provider" means any person, including but not limited to a corporation,  
14 partnership, limited liability company, sole proprietorship or natural person, that provides  
15 immigrant assistance services, but shall not include:

16 a. Any person duly admitted to practice law in this state and any person  
17 working directly under the supervision of the person admitted;

18 b. Any not-for-profit tax exempt organization that provides immigrant  
19 assistance without a fee or other payment from individuals or at nominal fees as defined by  
20 the federal board of immigration appeals, and the employees of such organization when  
21 acting within the scope of such employment;

22 c. Any organization recognized by the Federal Board of Immigration Appeals  
23 that provides services via representatives accredited by such board to appear before the  
24 Bureau of Citizenship and Immigration Services and/or Executive Office for Immigration  
25 Review, that does not charge a fee or charges nominal fees as defined by the Board of  
26 Immigration Appeals; or

27 d. Any authorized agency under [insert citation] and the employees of such  
28 organization when acting within the scope of such employment.  
29

30 Section 3. [*Immigrant Assistance Service Contracts.*] No immigrant assistance  
31 service shall be provided until the customer has executed a written contract with the provider  
32 who will provide such services. The contract shall be in a language understood by the  
33 customer, either alone or with the assistance of an available interpreter, and, if that language  
34 is not English, an English language version of the contract must also be provided. A copy of  
35 the contract shall be provided to the customer upon the customer's execution of the contract.  
36 The customer has the right to cancel the contract within [three business days] after his or her  
37 execution of the contract, without fee or penalty. The right to cancel the contract within  
38 [three days] without payment of any fee may be waived when services must be provided  
39 immediately to avoid a forfeiture of eligibility or other loss of rights or privileges, and the  
40 customer furnishes the provider with a separate dated and signed statement, by the customer  
41 or his or her representative, describing the need for services to be provided within [three  
42 days] and expressly acknowledging and waiving the right to cancel the contract within [three  
43 days]. The contract may be cancelled at any time after execution. If the contract is cancelled  
44 after [three days], or within [three days] if the right to cancel without fee has been waived,  
45 the provider may retain fees for services rendered, and any additional amounts actually  
46 expended on behalf of the customer. All other amounts must be returned to the customer  
47 within [fifteen days] after cancellation. The written contract shall be in plain language, in at  
48 least [twelve point type] and shall include the following:

49 a. The name, address and telephone number of the provider.

50 b. Itemization of all services to be provided to the customer, as well as the  
51 fees and costs to be charged to the customer.

52 c. A statement that original documents required to be submitted in connection  
53 with an application made to the federal bureau of citizenship and immigration services or for  
54 other certifications, benefits or services provided by government may not be retained by the  
55 immigrant assistance service provider for any reason, including payment of fees or costs.

56 d. A statement that the provider shall give the customer a copy of each  
57 document filed with a governmental entity.

58 e. A statement that the customer is not required to obtain supporting  
59 documents through the immigrant assistance service provider, but may obtain such  
60 documents himself or herself.

61 f. The statement: “You have three (3) business days to cancel this contract.  
62 Notice of cancellation must be in writing, signed by you and mailed by registered or certified  
63 United States mail to (specify address). If you cancel this contract within three days, you will  
64 get back your documents and any fees that you paid”.

65 g. A statement that the immigration services provider has financial surety in  
66 effect for the benefit of any customer in the event that the customer is owed a refund, or is  
67 damaged by the actions of the provider, together with the name, address and telephone  
68 number of the surety.

69 h. The statement: “The individual providing assistance to you under this  
70 contract is not an attorney licensed to practice law or accredited by the board of immigration  
71 appeals to provide representation to you before the Bureau of Citizenship and Immigration  
72 Services, the Department of Labor, the Department of State or any immigration authorities  
73 and may not give legal advice or accept fees for legal advice.”

74 i. The statement: “The individual providing assistance to you under this  
75 contract is prohibited from disclosing any information or filing any forms or documents with  
76 immigration or other authorities without your knowledge and consent.”

77 j. The statement: “A copy of all forms completed and documents  
78 accompanying the forms shall be kept by the service provider for three years. A copy of the  
79 customers file shall be provided to the client on demand and without fee.”

80  
81 Section 4. [*Posting of Signs.*] Every provider shall post signs, at every location where  
82 such provider meets with customers, setting forth information in English and in every other  
83 language in which the person provides or offers to provide immigrant assistance. There shall  
84 be a separate sign for each language, and each shall be posted in a location where it will be  
85 visible to customers.

86 a. One sign shall be at least [eleven inches by seventeen inches], and shall  
87 contain the following in not less than [sixty point type]:

88  
89 “The individual providing assistance to you under this contact is not an attorney  
90 licensed to practice law or accredited by the board of immigration appeals to provide  
91 representation to you before the Bureau of Citizenship and Immigration Services, the  
92 Department of Labor, the Department of State or any immigration authorities and  
93 may not give legal advice or accept fees for legal advice.”

94  
95 b. A separate sign shall be posed in a location visible to customers in  
96 conspicuous size type and which contains the schedule of fees for services offered and the  
97 statement: “You may cancel any contract within 3 business days and get back your  
98 documents and any money you paid.”

99  
100 Section 5. [*Notice in Advertisements.*] Every provider who advertises immigrant  
101 assistance services, whether by signs, pamphlets, newspapers, or any other written  
102 communication shall post or otherwise include with such advertisement a notice in the  
103 language in which the advertisement appears. This notice shall be of a conspicuous size and  
104 shall state:

105

106 “The individual providing assistance to you is not an attorney licensed to practice  
107 law or accredited by the Board of Immigration Appeals to provide representation to  
108 you before the Bureau of Citizenship and Immigration Services, the Department of  
109 Labor, the Department of State or any immigration authorities and may not give  
110 legal advice or accept fees for legal advice.”

111  
112 Section 6. [*Prohibited Acts.*] No provider shall:

113 a. Give legal advice, or otherwise engage in the practice of law.

114 b. Assume, use or advertise the title of lawyer or attorney at law, or equivalent  
115 terms in the English language or any other language, or represent or advertise other titles or  
116 credentials, including but not limited to “notary public,” “accredited representative of the  
117 board of immigration appeals” or “immigration consultant,” that could cause a customer to  
118 believe that the person possesses special professional skills or is authorized to provide advice  
119 on an immigration matter; provided that a notary public licensed by the [secretary of state]  
120 may use the term “notary public.”

121 c. State or imply that the person can or will obtain special favors from or has  
122 special influence with the Bureau of Citizenship and Immigration Services or any other  
123 governmental entity, or threaten to report the client to immigration or other authorities or  
124 undermine in any way the client’s immigration status or attempt to secure lawful status.

125 d. Demand or retain any fees or compensation for services not performed, or  
126 costs that are not actually incurred.

127 e. Advise, direct or permit a customer to answer questions on a government  
128 document, or in a discussion with a government official, in a specific way where the provider  
129 knows or has reasonable cause to believe that the answers are false or misleading.

130 f. Disclose any information to, or file any forms or documents with,  
131 immigration or other authorities without the knowledge or consent of the customer.

132 g. Fail to provide customers with copies of documents filed with a  
133 governmental entity or refuse to return original documents supplied by, prepared on behalf  
134 of, or paid for by the customer, upon the request of the customer, or upon termination of the  
135 contract. Original documents must be returned promptly upon request and upon cancellation  
136 of the contract, even if there is a fee dispute between the immigration assistance service  
137 provider and the customer.

138 g. Make any misrepresentation or false statement, directly or indirectly.

139 h. Make any guarantee or promise to a customer, unless there is a basis in fact  
140 for such representation, and the guarantee or promise is in writing.

141 i. Represent that a fee may be charged, or charge a fee for the distribution,  
142 provision or submission of an official document or form issued or promulgated by a state or  
143 federal governmental entity, or for a referral of the customer to another person or entity that  
144 is qualified to provide services or assistance which the immigrant assistance service provider  
145 will not provide.

146  
147 Section 7. [*Retention of Documents.*] Every provider shall retain copies of all  
148 documents prepared or obtained in connection with a customer’s request for assistance for a  
149 period of [three years] after a written contract is executed by the provider and the customer,  
150 whether or not such contract is subsequently cancelled.

151  
152 Section 8. [*Surety Requirement.*] Every provider shall maintain in full force and  
153 effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of  
154 [the state], in the principal amount of [fifty thousand dollars]; provided, however, that every

155 provider that receives in excess of [two hundred fifty thousand dollars] in total fees and other  
156 compensation for providing immigrant assistance service during any [twelve-month period]  
157 shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of  
158 credit, payable to the people of [the state], in the principal amount of [twenty percent] of  
159 such total fees and compensation. Such surety shall be for the benefit of any customer who  
160 does not receive a refund of fees from the provider to which he or she is entitled, or is  
161 otherwise injured by the provider. The [attorney general] on behalf of the customer or the  
162 customer in his or her own name, may maintain an action against the provider and the  
163 surety.

164

165 Section 9. [*Enforcement.*] Upon any violation of this Act, an application may be  
166 made by the [attorney general] in the name of the people of the state to a court having  
167 jurisdiction to issue an injunction, and upon notice to the respondent of not fewer than [five  
168 days], to enjoin and restrain the continuance of the violation. If it shall appear to the  
169 satisfaction of the [court or justice] that the defendant has, in fact, violated this Act, an  
170 injunction may be issued by such court or justice, enjoining and restraining any further  
171 violation, without requiring proof that any person has, in fact, been injured or damaged  
172 thereby. In any such proceeding, the court may make allowances to the [attorney general] as  
173 provided in [insert citation]. Whenever the court shall determine that a violation of this Act  
174 has occurred, the court may impose a civil penalty of not more than [seven thousand five  
175 hundred dollars] for each violation.

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177 Section 10. [*Violations.*] Any violation of any provision of this Act shall be a [Class  
178 A Misdemeanor, and upon conviction the court may order as part of the sentence imposed  
179 restitution or reparation to the victim of the crime pursuant to [insert citation].

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181 Section 11. [*Other Remedies.*] The civil and criminal remedies set forth in this Act  
182 shall not preclude any individual or entity or government authority from seeking relief under  
183 any other statutory or common law right to relief.

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185 Section 12. [*Severability.*] [Insert severability clause.]

186

187 Section 13. [*Repealer.*] [Insert repealer clause.]

188

189 Section 14. [*Effective Date.*] [Insert effective date.]