

# 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 country,  
7 or their representatives, in relation to any proceeding, filing or action affecting the non-  
8 immigrant, immigrant or citizenship status of a person which arises under the immigration and  
9 nationality law, executive order or presidential proclamation, or which arises under actions or

10 regulations of the United States Bureau of Citizenship and Immigration Services, the United  
11 States Department of Labor, or the United States Department of State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74 j. The statement: “A copy of all forms completed and documents accompanying  
75 the forms shall be kept by the service provider for three years. A copy of the customer’s file shall  
76 be provided to the client on demand and without fee.”

77  
78 Section 4. [*Posting of Signs.*] Every provider shall post signs, at every location where  
79 such provider meets with customers, setting forth information in English and in every other  
80 language in which the person provides or offers to provide immigrant assistance. There shall be a  
81 separate sign for each language, and each shall be posted in a location where it will be visible to  
82 customers.

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

85  
86 “The individual providing assistance to you under this contact is not an attorney licensed  
87 to practice law or accredited by the board of immigration appeals to provide  
88 representation to you before the Bureau of Citizenship and Immigration Services, the  
89 Department of Labor, the Department of State or any immigration authorities and may  
90 not give legal advice or accept fees for legal advice.”

91  
92 b. A separate sign shall be posed in a location visible to customers in conspicuous  
93 size type and which contains the schedule of fees for services offered and the statement: “You  
94 may cancel any contract within 3 business days and get back your documents and any money  
95 you paid.”

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

101  
102 “The individual providing assistance to you is not an attorney licensed to practice law or  
103 accredited by the Board of Immigration Appeals to provide representation to you before  
104 the Bureau of Citizenship and Immigration Services, the Department of Labor, the  
105 Department of State or any immigration authorities and may not give legal advice or  
106 accept fees for legal advice.”

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

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

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

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

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

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

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

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

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

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

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

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

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147 Section 8. [*Surety Requirement.*] Every provider shall maintain in full force and effect a  
148 bond, contract of indemnity, or irrevocable letter of credit, payable to the people of [the state], in  
149 the principal amount of [fifty thousand dollars]; provided, however, that every provider that  
150 receives in excess of [two hundred fifty thousand dollars] in total fees and other compensation  
151 for providing immigrant assistance service during any [twelve-month period] shall maintain in  
152 full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the  
153 people of [the state], in the principal amount of [twenty percent] of such total fees and  
154 compensation. Such surety shall be for the benefit of any customer who does not receive a refund  
155 of fees from the provider to which he or she is entitled, or is otherwise injured by the provider.

156 The [attorney general] on behalf of the customer or the customer in his or her own name, may  
157 maintain an action against the provider and the surety.

158

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

169

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

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

177

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

179

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

181

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