Notary Publics/Accredited Immigration Representatives

According to a press release from Illinois Governor Rod Blagojevich’s office, “Though ‘notario’ translates to ‘notary’ in English, the literal Spanish translation of ‘notario’ is ‘attorney.’ In many cases, so-called ‘notarios’ provide legal advice, analysis or legal judgment to many Spanish speakers even though they are not attorneys, and not licensed to provide such advice.” Illinois enacted Public Act 093-1001 in 2004 to address the problem. The draft in this SSL volume is based on Illinois’ law.

This SSL draft prohibits a person whose prior notary commission was suspended, canceled, or revoked from receiving another commission. The Act exempts notaries who are accredited immigration representatives from the requirement that non-English advertisements of service include a notice that the notary is not an attorney. It applies the notice requirement to other identifying articles, such as letterhead and business cards. This Act prohibits the literal translation of various English terms that may imply the notary is an attorney. It prohibits a notary from accepting fees for immigration advice or assistance. The Act also permits recovery of prohibited fees through compensatory damages and permits punitive damages of 3 times the amount of the fees.

The Act provides that no notary public who is not an attorney or an accredited representative shall provide or accept payment in exchange for any assistance that requires legal analysis, legal judgment, or interpretation of the law. It provides that the $1,000 fine imposed for violation of the immigration services notice requirement shall apply only if the violation is not subject to penalties under the state Notary Public Act.

Submitted as:
Illinois
Public Act 093-1001
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act Concerning Notaries Public.”

Section 2. [Definitions.] As used in this Act:
(a) The terms “notary public” and “notary” are used interchangeably to mean any individual appointed and commissioned to perform notarial acts.
(b) “Notarization” means the performance of a notarial act.
(c) “Accredited immigration representative” means a not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of those organizations accredited under 8 C.F.R. 292.2(d).

Section 3. [Application.] Every applicant for appointment and commission as a notary shall complete an application form furnished by the [Secretary of State] to be filed with the [Secretary of State], stating:
(a) the applicant’s official name, which contains his or her last name and at least the initial of the first name;
(b) the county in which the applicant resides or, if the applicant is a resident of a state bordering [this state], the county in [this state] in which that person’s principal place of work or principal place of business is located;

c) the applicant’s residence address and business address, if any, or any address at which an applicant will use a notary public commission to receive fees;

d) that the applicant has resided in [this state] for [30 days] preceding the application or that the applicant who is a resident of a state bordering [this state] has worked or maintained a business in [this state] for [30 days] preceding the application;

e) that the applicant is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

f) that the applicant is at least [18 years] of age;

g) that the applicant is able to read and write the English language;

h) that the applicant has never been the holder of a notary public appointment that was revoked or suspended during the past [10 years];

i) that the applicant has not been convicted of a felony; and

j) any other information the [Secretary of State] deems necessary.

Section 4. [Notice.]

(a) Every notary public who is not an attorney or an accredited immigration representative who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following: notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN [insert state] AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.” If such advertisement is by radio or television, the statement may be modified but must include substantially the same message. A notary public shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the notary public, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word “notario” is prohibited under this provision. Failure to follow the procedures in this Section shall result in a fine of [$1,000] for each written violation. The second violation shall result in suspension of notary authorization. The third violation shall result in permanent revocation of the commission of notary public. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(b) All notaries public required to comply with the provisions of subsection (a) shall prominently post at their place of business as recorded with the [Secretary of State] pursuant to this Act a schedule of fees established by law which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which notary services were solicited and shall contain the disavowal of legal representation required above in subsection (a), unless such notice of disavowal is already prominently posted.

(c) No notary public, agency or any other person who is not an attorney shall represent, hold themselves out or advertise that they are experts on immigration matters or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law unless they are a designated entity as defined pursuant to Section 245a.1 of Part 245a of the Code of Federal Regulations (8 CFR 245a.1) or an entity accredited by the Board of Immigration Appeals.
(d) Any person who aids, abets or otherwise induces another person to give false information concerning immigration status shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense. Any notary public who violates the provisions of this Section shall be guilty of official misconduct and subject to fine or imprisonment. Nothing in this Section shall preclude any consumer of notary public services from pursuing other civil remedies available under the law.

(e) No notary public who is not an attorney or an accredited representative shall accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(f) Violation of subsection (e) is a business offense punishable by a fine of [3 times] the amount received for services, or [$1,001] minimum, and restitution of the amount paid to the consumer. Nothing in this Section shall be construed to preempt nor preclude additional appropriate civil remedies or criminal charges available under law.

(g) If a notary public of this State is convicted of [2 or more] business offenses involving a violation of this Act within a [12-month] period while commissioned, or of [3 or more] business offenses involving a violation of this Act within a [5-year] period regardless of being commissioned, the [Secretary] shall automatically revoke the notary public commission of that person on the date that the person’s most recent business offense conviction is entered as a final judgment.

Section 5. [Maximum Fee.]

(a) Except as provided in subsection (b) of this Section, the maximum fee in this State is [$1.00] for any notarial act performed.

(b) Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the following:

1. [$10] per form completion;
2. [$10] per page for the translation of a non-English language into English where such translation is required for immigration forms;
3. [$1] for notarizing;
4. [$3] to execute any procedures necessary to obtain a document required to complete immigration forms; and
5. A maximum of [$75] for one complete application.

Fees authorized under this subsection shall not include application fees required to be submitted with immigration applications. Any person who violates the provisions of this subsection shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense.

(c) Upon his own information or upon complaint of any person, the [Attorney General] or any [State’s Attorney], or their designee, may maintain an action for injunctive relief in the court against any notary public or any other person who violates the provisions of subsection (b) of this Section. These remedies are in addition to, and not in substitution for, other available remedies. If the [Attorney General] or any [State’s Attorney fails] to bring an action as provided pursuant to this subsection within [90 days] of receipt of a complaint, any person may file a civil action to enforce the provisions of this subsection and maintain an action for injunctive relief.

(d) All notaries public must provide receipts and keep records for fees accepted for services provided. Failure to provide receipts and keep records that can be presented as evidence of no wrongdoing shall be construed as a presumptive admission of allegations raised in complaints against the notary for violations related to accepting prohibited fees.
Section 6. [Immigration Services.] As used in this Section:

(a)  (1) “Immigration matter” means any proceeding, filing, or action affecting the nonimmigrant, immigrant or citizenship status of any person that arises under immigration and naturalization law, executive order or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Citizenship and Immigration Services, the United States Department of Labor, or the United States Department of State.

(2) “Immigration assistance service” means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(3) “Compensation” means money, property, services, promise of payment, or anything else of value.

(4) “Employed by” means that a person is on the payroll of the employer and the employer deducts from the employee’s paycheck social security and withholding taxes, or receives compensation from the employer on a commission basis or as an independent contractor.

(5) “Reasonable costs” means actual costs or, if actual costs cannot be calculated, reasonably estimated costs of such things as photocopying, telephone calls, document requests, and filing fees for immigration forms, and other nominal costs incidental to assistance in an immigration matter.

(b) The General Assembly finds and declares that private individuals who assist persons with immigration matters have a significant impact on the ability of their clients to reside and work within the United States and to establish and maintain stable families and business relationships. The General Assembly further finds that that assistance and its impact also have a significant effect on the cultural, social, and economic life of this state and thereby substantially affect the public interest. It is the intent of the General Assembly to establish rules of practice and conduct for those individuals to promote honesty and fair dealing with residents and to preserve public confidence.

(c) The following people are exempt from this Section, provided they prove the exemption by a preponderance of the evidence:

(1) An attorney licensed to practice law in any state or territory of the United States, or of any foreign country when authorized by the [state Supreme Court], to the extent the attorney renders immigration assistance service in the course of his or her practice as an attorney.

(2) A legal intern, as described by the rules of the [state Supreme Court], employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the intern’s employment.

(3) A not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of those organizations accredited under 8 C.F.R.292.2(d).

(4) Any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided. Nothing in this Section shall regulate any business to the extent that such regulation is prohibited or preempted by State or federal law. All other persons providing or offering to provide immigration assistance service shall be subject to this Section.

(d) Any person who provides or offers to provide immigration assistance service may perform only the following services:
(1) Completing a government agency form, requested by the customer and appropriate to the customer’s needs, only if the completion of that form does not involve a legal judgment for that particular matter.

(2) Transcribing responses to a government agency form which is related to an immigration matter, but not advising a customer as to his or her answers on those forms.

(3) Translating information on forms to a customer and translating the customer’s answers to questions posed on those forms.

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms.

(5) Translating documents from a foreign language into English.

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public of this state.

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter.

(8) Preparing or arranging for the preparation of photographs and fingerprints.

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results.

(10) Conducting English language and civics courses.

(11) Other services that the Attorney General determines by rule may be appropriately performed by such persons in light of the purposes of this Section.

Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the maximum fees set forth in subsections (a) and (b) of Section 5 of this Act. No person subject to this Act shall charge fees directly or indirectly for referring an individual to an attorney or for any immigration matter not authorized by this Act, provided that a person may charge a fee for notarizing documents as permitted by the this Act.

(e) Any person performing such services shall register with the Attorney General and submit verification of malpractice insurance or of a surety bond.

(f) Except as provided otherwise in this subsection, before providing any assistance in an immigration matter a person shall provide the customer with a written contract that includes the following:

(1) An explanation of the services to be performed.

(2) Identification of all compensation and costs to be charged to the customer for the services to be performed.

(3) A statement that documents submitted in support of an application for nonimmmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs. This subsection does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse the organization’s or clinic’s reasonable costs relating to providing immigration services to that client.

(g) Any person who provides or offers immigration assistance service and is not exempted from this Section, shall post signs at his or her place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least 11 inches by 17 inches], and shall contain the following:

(1) The statement “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”
The statement “I AM NOT ACCREDITED TO REPRESENT YOU BEFORE THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AND THE IMMIGRATION BOARD OF APPEALS.”

(3) The fee schedule.
(4) The statement that “YOU MAY CANCEL ANY CONTRACT WITHIN 3 WORKING DAYS AND GET YOUR MONEY BACK FOR SERVICES NOT PERFORMED.”

(5) Additional information the [Attorney General] may require by rule.

(h) Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN [insert state] AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.” If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(i) Any person who provides or offers immigration assistance service and is not exempted from this Section shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word “notario” is prohibited under this provision.

(j) If not subject to penalties under subsection (a) of Section 4 of this Act, violations of this subsection shall result in a fine of [$1,000]. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(k) The written contract shall be in both English and in the language of the customer.

(l) A copy of the contract shall be provided to the customer upon the customer’s execution of the contract.

(m) A customer has the right to rescind a contract within [72 hours] after his or her signing of the contract.

(n) Any documents identified in Paragraph (3) of Subsection (f) of this Section shall be returned upon demand of the customer.

(o) No person engaged in providing immigration services who is not exempted under this Section shall do any of the following:

(1) Make any statement that the person can or will obtain special favors from or has special influence with the United States Immigration and Naturalization Service or any other government agency.

(2) Retain any compensation for service not performed.

(3) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(4) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer.

(5) Represent or advertise, in connection with the provision assistance in immigration matters, other titles of credentials, including but not limited to “notary public” or “immigration consultant,” that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public appointed by the [Secretary of State] may use the term “notary public” if the
(6) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(7) Make any misrepresentation of false statement, directly or indirectly, to influence, persuade, or induce patronage.

(p) Any person who violates any provision of this Section, or the rules and regulations issued under this Section, shall be guilty of a [Class A misdemeanor] for a first offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a previous conviction for the same offense. Upon his own information or upon the complaint of any person, the [Attorney General] or any [State’s Attorney], or a municipality with a population of more than [1,000,000], may maintain an action for injunctive relief and also seek a civil penalty not exceeding [$50,000] in the [circuit court] against any person who violates any provision of this Section. These remedies are in addition to, and not in substitution for, other available remedies. If the [Attorney General] or any [State’s Attorney] or a municipality with a population of more than 1,000,000 fails to bring an action as provided under this Section any person may file a civil action to enforce the provisions of this Act and maintain an action for injunctive relief, for compensatory damages to recover prohibited fees, or for such additional relief as may be appropriate to deter, prevent, or compensate for the violation. In order to deter violations of this Section, courts shall not require a showing of the traditional elements for equitable relief. A prevailing plaintiff may be awarded [3 times] the prohibited fees or a minimum of [$1,000] in punitive damages, attorney’s fees, and costs of bringing an action under this Section. It is the express intention of the [General Assembly] that remedies for violation of this Section be cumulative.

(q) No unit of local government, including any home rule unit, shall have the authority to regulate immigration assistance services unless such regulations are at least as stringent as those contained in this Act. It is declared to be the law of this State, pursuant to [insert citation], that this Act is a limitation on the authority of a home rule unit to exercise powers concurrently with the State. The limitations of this Section do not apply to a home rule unit that has, prior to the effective date of this amendatory Act, adopted an ordinance regulating immigration assistance services.

(r) This Section is severable under [insert citation].

(s) The [Attorney General] shall issue rules not inconsistent with this Section for the implementation, administration, and enforcement of this Section by [insert date]. The rules may provide for the following:

(1) The content, print size, and print style of the signs required under subsection (g) of this section of this Act. Print sizes and styles may vary from language to language.

(2) Standard forms for use in the administration of this Section.

(3) Any additional requirements deemed necessary.