

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.)

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

2

3 Section 2. [*Definitions.*] As used in this Act:

4 (a) The terms "notary public" and "notary" are used interchangeably to mean any
5 individual appointed and commissioned to perform notarial acts.

6 (b) "Notarization" means the performance of a notarial act.

7 (c) "Accredited immigration representative" means a not-for-profit organization
8 recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of
9 those organizations accredited under 8 C.F.R. 292.2(d).

10

11 Section 3. [*Application.*] Every applicant for appointment and commission as a notary
12 shall complete an application form furnished by the [Secretary of State] to be filed with the
13 [Secretary of State], stating:

14

(a) the applicant's official name, which contains his or her last name and at least the
15 initial of the first name;

16 (b) the county in which the applicant resides or, if the applicant is a resident of a state
17 bordering [this state], the county in [this state] in which that person’s principal place of work or
18 principal place of business is located;

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

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

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

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

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

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

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

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

32
33 Section 4. *[Notice.]*

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

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

59 (c) No notary public, agency or any other person who is not an attorney shall represent,
60 hold themselves out or advertise that they are experts on immigration matters or provide any
61 other assistance that requires legal analysis, legal judgment, or interpretation of the law unless
62 they are a designated entity as defined pursuant to Section 245a.1 of Part 245a of the Code of
63 Federal Regulations (8 CFR 245a.1) or an entity accredited by the Board of Immigration
64 Appeals.

65 (d) Any person who aids, abets or otherwise induces another person to give false
66 information concerning immigration status shall be guilty of a [Class A misdemeanor] for a first
67 offense and a [Class 3 felony] for a second or subsequent offense committed within [5 years] of a
68 previous conviction for the same offense. Any notary public who violates the provisions of this
69 Section shall be guilty of official misconduct and subject to fine or imprisonment. Nothing in this
70 Section shall preclude any consumer of notary public services from pursuing other civil remedies
71 available under the law.

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

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

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

85
86 Section 5. [*Maximum Fee.*]

87 (a) Except as provided in subsection (b) of this Section, the maximum fee in this State is
88 [\$1.00] for any notarial act performed.

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

91 (1) [\$10] per form completion;

92 (2) [\$10] per page for the translation of a non-English language into English
93 where such translation is required for immigration forms;

94 (3) [\$1] for notarizing;

95 (4) [\$3] to execute any procedures necessary to obtain a document required to
96 complete immigration forms; and

97 (5) A maximum of [\$75] for one complete application.

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

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

109 (d) All notaries public must provide receipts and keep records for fees accepted for
110 services provided. Failure to provide receipts and keep records that can be presented as evidence
111 of no wrongdoing shall be construed as a presumptive admission of allegations raised in
112 complaints against the notary for violations related to accepting prohibited fees.

113

114 Section 6. [*Immigration Services.*] As used in this Section:

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

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

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

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

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

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

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

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

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

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

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

160 (d) Any person who provides or offers to provide immigration assistance service may
161 perform only the following services:

162 (1) Completing a government agency form, requested by the customer and
163 appropriate to the customer's needs, only if the completion of that form does not involve a legal
164 judgment for that particular matter.

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

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

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

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

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

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

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

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

180 (10) Conducting English language and civics courses.

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

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

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

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

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

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

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

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

209 (1) The statement "I AM NOT AN ATTORNEY LICENSED TO PRACTICE
210 LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

211 (2) The statement “I AM NOT ACCREDITED TO REPRESENT YOU BEFORE
212 THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AND THE
213 IMMIGRATION BOARD OF APPEALS.”

214 (3) The fee schedule.

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

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

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

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

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

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

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

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

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

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

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

249 (2) Retain any compensation for service not performed.

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

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

255 (5) Represent or advertise, in connection with the provision assistance in
256 immigration matters, other titles of credentials, including but not limited to “notary public” or
257 “immigration consultant,” that could cause a customer to believe that the person possesses
258 special professional skills or is authorized to provide advice on an immigration matter; provided
259 that a notary public appointed by the [Secretary of State] may use the term “notary public” if the

260 use is accompanied by the statement that the person is not an attorney; the term “notary public”
261 may not be translated to another language; for example “notario” is prohibited.

262 (6) Provide legal advice, recommend a specific course of legal action, or provide
263 any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

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

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

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

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

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

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

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

298 (3) Any additional requirements deemed necessary.

299

300 Section 7. [*Severability.*] [Insert severability clause.]

301

302 Section 8. [*Repealer.*] [Insert repealer clause.]

303

304 Section 9. [*Effective Date.*] [Insert effective date.]