

1 **IMMIGRATION CONSULTANTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Luz Robles**

5 House Sponsor: Jeremy A. Peterson

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**LONG TITLE**

7 **General Description:**

8 This bill modifies commerce and trade provisions to provide for the registration of  
9 immigration consultants.  
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11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ enacts the Immigration Consultants Registration Act, including:
- 14 • defining terms;
  - 15 • requiring certain persons to be registered as immigration consultants;
  - 16 • establishing application requirements;
  - 17 • requiring a criminal background check;
  - 18 • providing requirements for posting a bond;
  - 19 • establishing requirements for a contract entered into by an immigration  
20 consultant;
  - 21 • requiring accounting for services;
  - 22 • addressing translations and prohibited acts;
  - 23 • addressing delivery, release, and treatment of documents;
  - 24 • providing requirements for posted notices; and
  - 25 • providing for enforcement and for recovery of losses; and
- 26 ▶ makes technical and conforming amendments.

27 **Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 This bill takes effect on July 1, 2012.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **13-2-1**, as last amended by Laws of Utah 2006, Chapter 154

34 ENACTS:

35 **13-49-101**, Utah Code Annotated 1953

36 **13-49-102**, Utah Code Annotated 1953

37 **13-49-201**, Utah Code Annotated 1953

38 **13-49-202**, Utah Code Annotated 1953

39 **13-49-203**, Utah Code Annotated 1953

40 **13-49-204**, Utah Code Annotated 1953

41 **13-49-301**, Utah Code Annotated 1953

42 **13-49-302**, Utah Code Annotated 1953

43 **13-49-303**, Utah Code Annotated 1953

44 **13-49-304**, Utah Code Annotated 1953

45 **13-49-305**, Utah Code Annotated 1953

46 **13-49-401**, Utah Code Annotated 1953

47 **13-49-402**, Utah Code Annotated 1953

48 **13-49-403**, Utah Code Annotated 1953

49 **13-49-404**, Utah Code Annotated 1953

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51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **13-2-1** is amended to read:

53 **13-2-1. Consumer protection division established -- Functions.**

54 (1) There is established within the Department of Commerce the Division of Consumer  
55 Protection.

56 (2) The division shall administer and enforce the following:

57 (a) Chapter 5, Unfair Practices Act;

58 (b) Chapter 10a, Music Licensing Practices Act;

- 59 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 60 (d) Chapter 15, Business Opportunity Disclosure Act;
- 61 (e) Chapter 20, New Motor ~~[Vehicles]~~ Vehicle Warranties Act;
- 62 (f) Chapter 21, Credit Services Organizations Act;
- 63 (g) Chapter 22, Charitable Solicitations Act;
- 64 (h) Chapter 23, Health Spa Services Protection Act;
- 65 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 66 (j) Chapter 26, Telephone Fraud Prevention Act;
- 67 (k) Chapter 28, Prize Notices Regulation Act;
- 68 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 69 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 70 (n) Chapter 41, Price Controls During Emergencies Act; ~~[and]~~
- 71 (o) Chapter 42, Uniform Debt-Management Services Act[-]; and
- 72 (p) Chapter 49, Immigration Consultants Registration Act.

73 Section 2. Section **13-49-101** is enacted to read:

74 **CHAPTER 49. IMMIGRATION CONSULTANTS REGISTRATION ACT**

75 **Part 1. General Provisions**

76 **13-49-101. Title.**

77 This chapter is known as the "Immigration Consultants Registration Act."

78 Section 3. Section **13-49-102** is enacted to read:

79 **13-49-102. Definitions.**

80 As used in this chapter:

81 (1) "Client" means a person who receives services from or enters into an agreement to  
82 receive services from an immigration consultant.

83 (2) "Compensation" means anything of economic value that is paid, loaned, granted,  
84 given, donated, or transferred to a person for or in consideration of:

85 (a) services;

86 (b) personal or real property; or

87 (c) another thing of value.

88 (3) "Department" means the Department of Commerce.

89 (4) "Division" means the Division of Consumer Protection in the department.

90 (5) "Immigration consultant" means a person who provides nonlegal assistance or  
91 advice on an immigration matter including:

92 (a) completing a document provided by a federal or state agency, but not advising a  
93 person as to the person's answers on the document;

94 (b) translating a person's answer to a question posed in a document provided by a  
95 federal or state agency;

96 (c) securing for a person supporting documents, such as a birth certificate, that may be  
97 necessary to complete a document provided by a federal or state agency;

98 (d) submitting a completed document on a person's behalf and at the person's request to  
99 the United States Citizenship and Immigration Services; and

100 (e) referring a person to a person who could undertake legal representation activities in  
101 an immigration matter.

102 (6) "Immigration matter" means a proceeding, filing, or action affecting the  
103 immigration or citizenship status of a person that arises under:

104 (a) immigration and naturalization law;

105 (b) executive order or presidential proclamation; or

106 (c) action of the United States Citizenship and Immigration Services, the United States  
107 Department of State, or the United States Department of Labor.

108 Section 4. Section **13-49-201** is enacted to read:

109 **Part 2. Registration Requirements**

110 **13-49-201. Requirement to be registered as an immigration consultant --**

111 **Exemptions.**

112 (1) (a) Except as provided in Subsection (1)(b), a person may not engage in an activity  
113 of an immigration consultant for compensation unless the person is registered under this  
114 chapter.

115 (b) Subsection (1)(a) does not apply to a person authorized:

116 (i) to practice law in this state; or

117 (ii) by federal law to represent persons before the Board of Immigration Appeals or the  
118 United States Citizenship and Immigration Services.

119 (2) An immigration consultant may only offer nonlegal assistance or advice in an  
120 immigration matter.

121 Section 5. Section **13-49-202** is enacted to read:

122 **13-49-202. Application for registration.**

123 (1) To register as an immigration consultant a person shall:

124 (a) submit an application in a form prescribed by the division;

125 (b) pay a fee determined by the department in accordance with Section 63J-1-504,

126 which includes the costs of the criminal background check required under Subsection (1)(e);

127 (c) have good moral character in that the applicant has not be convicted of:

128 (i) a felony; or

129 (ii) within the last 10 years, a misdemeanor involving theft, fraud, or dishonesty;

130 (d) submit fingerprint cards in a form acceptable to the division at the time the

131 application is filed; and

132 (e) consent to a fingerprint background check by the Utah Bureau of Criminal

133 Identification regarding the application.

134 (2) The division shall register a person who qualifies under this chapter as an

135 immigration consultant.

136 Section 6. Section **13-49-203** is enacted to read:

137 **13-49-203. Requirement to submit to criminal background check.**

138 (1) The division shall require an applicant for registration as an immigration consultant

139 to:

140 (a) submit a fingerprint card in a form acceptable to the division; and

141 (b) consent to a fingerprint criminal background check by the Utah Bureau of Criminal

142 Identification.

143 (2) (a) The division shall obtain information from a criminal history record maintained

144 by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau

145 of Criminal Identification.

146 (b) The information obtained under Subsection (2)(b), may only be used by the

147 division to determine whether an applicant for registration as an immigration consultant meets

148 the requirements of Subsection 13-49-202(1)(c).

149 Section 7. Section **13-49-204** is enacted to read:

150 **13-49-204. Bonds -- Exemption -- Statements dependant on posting bond.**

151 (1) Except as provided in Subsection (5), an immigration consultant shall post a cash

152 bond or surety bond:

153 (a) in the amount \$50,000; and

154 (b) payable to the division for the benefit of any person damaged by a fraud,

155 misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an

156 immigration consultant, or an agent, representative, or employee of an immigration consultant.

157 (2) A bond required under this section shall be:

158 (a) in a form approved by the attorney general; and

159 (b) conditioned upon the faithful compliance of an immigration consultant with this

160 chapter and division rules.

161 (3) (a) If a surety bond posted by an immigration consultant under this section is

162 canceled due to the person's negligence, the division may assess a \$300 reinstatement fee.

163 (b) No part of a bond posted by an immigration consultant under this section may be

164 withdrawn:

165 (i) during the period the registration under this chapter is in effect; or

166 (ii) while a revocation proceeding is pending against the person.

167 (4) (a) A bond posted under this section by an immigration consultant may be forfeited

168 if the person's registration under this chapter is revoked.

169 (b) Notwithstanding Subsection (4)(a), the division may make a claim against a bond

170 posted by an immigration consultant for money owed the division under this division without

171 the commission first revoking the immigration consultant's registration.

172 (5) The requirements of this section do not apply to an employee of a nonprofit,

173 tax-exempt corporation who assists clients to complete an application document in an

174 immigration matter, free of charge or for a fee, including reasonable costs, consistent with that

175 authorized by the Board of Immigration Appeals under 8 C.F.R. Sec. 292.2.

176 (6) A person may not disseminate by any means a statement indicating that the person

177 is an immigration consultant, engages in the business of an immigration consultant, or proposes

178 to engage in the business of an immigration consultant, unless the person has posted a bond

179 under this section that is maintained throughout the period covered by the statement, such as a

180 listing in a telephone book.

181 (7) An immigration consultant may not make or authorize the making of an oral or

182 written reference to the immigration consultant's compliance with the bonding requirements of

183 this section except as provided in this chapter.

184 Section 8. Section **13-49-301** is enacted to read:

185 **Part 3. Operational Requirements**

186 **13-49-301. Requirements for written contract -- Prohibited statements.**

187 (1) (a) Before an immigration consultant may provide services to a client, the  
188 immigration consultant shall provide the client with a written contract. The contents of the  
189 written contract shall comply with this section and rules made by the division in accordance  
190 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

191 (b) A client may rescind a written contract within 72 hours of execution of the written  
192 contract.

193 (2) A written contract under this section shall be stated in both English and in the  
194 client's native language.

195 (3) A written contract under this section shall:

196 (a) state the purpose for which the immigration consultant has been hired;

197 (b) state the one or more services to be performed;

198 (c) state the price for a service to be performed;

199 (d) include a statement printed in 10-point boldface type that the immigration  
200 consultant is not an attorney and may not perform the legal services that an attorney performs;

201 (e) with regard to a document to be prepared by the immigration consultant:

202 (i) list the document to be prepared;

203 (ii) explain the purpose of the document;

204 (iii) explain the process to be followed in preparing of the document;

205 (iv) explain the action to be taken by the immigration consultant;

206 (v) state the agency or office where each document will be filed; and

207 (vi) state the approximate processing times according to current published agency  
208 guidelines;

209 (f) include a provision stating that the person may report complaints relating to an  
210 immigration consultant to the:

211 (i) division, including a toll-free telephone number and Internet web site; and

212 (ii) Office of Immigrant Assistance of the United States Department of Justice,

213 including a toll-free telephone number and Internet web site;

214 (g) include a provision stating that complaints concerning the unauthorized practice of  
215 law may be reported to the Utah State Bar, including a toll-free telephone number and Internet  
216 web site; and

217 (h) include a provision stating that a client may rescind the contract within 72 hours of  
218 signing the contract.

219 (4) A written contract may not contain a provision relating to the following:

220 (a) a guarantee or promise, unless the immigration consultant has some basis in fact for  
221 making the guarantee or promise; or

222 (b) a statement that the immigration consultant can or will obtain a special favor from  
223 or has special influence with the United States Citizenship and Immigration Services, or any  
224 other governmental agency, employee, or official, that may have a bearing on a client's  
225 immigration matter.

226 (5) An immigration consultant may not make a statement described in Subsection (4)  
227 orally to a client.

228 (6) A written contract is void if not written in accordance with this section.

229 (7) This section does not apply to an employee of a nonprofit, tax-exempt corporation  
230 who assists clients to complete application documents in an immigration matter free of charge  
231 or for a fee, including reasonable costs, as authorized by the Board of Immigration Appeals  
232 under 8 C.F.R. Sec. 292.2.

233 Section 9. Section **13-49-302** is enacted to read:

234 **13-49-302. Accounting for services -- Receipts.**

235 (1) An immigration consultant shall provide a signed receipt to a client for each  
236 payment made by that client. The receipt shall be typed or computer generated on the  
237 immigration consultant's letterhead.

238 (2) An immigration consultant shall make a statement of accounting for the services  
239 rendered and payments made:

240 (a) in the client's native language;

241 (b) to the client every two months;

242 (c) that is typed or computer generated on the immigration consultant's letterhead;

243 (d) that lists the individual charges and total charges for services; and

244 (e) that lists the payments made by the client.



245 Section 10. Section **13-49-303** is enacted to read:

246 **13-49-303. Notice to be displayed -- Disclosure to be provided in writing.**

247 (1) An immigration consultant shall conspicuously display in the immigration  
248 consultant's office a notice that shall be at least 12 by 20 inches with boldface type or print with  
249 each character at least one inch in height and width in English and in the native language of the  
250 immigration consultant's clientele, that contains the following information:

251 (a) the full name, address, and evidence of compliance with any applicable bonding  
252 requirement including the bond number, if any;

253 (b) a statement that the immigration consultant is not an attorney;

254 (c) the services that the immigration consultant provides and the current and total fee  
255 for each service; and

256 (d) the name of each immigration consultant employed at each location.

257 (2) Before providing any services, an immigration consultant shall provide a client  
258 with a written disclosure in the native language of the client that includes the following:

259 (a) the immigration consultant's name, address, and telephone number;

260 (b) the immigration consultant's agent for service of process;

261 (c) the legal name of the employee who consults with the client, if different from the  
262 immigration consultant; and

263 (d) evidence of compliance with any applicable bonding requirement, including the  
264 bond number, if any.

265 (3) (a) Except as provided in Subsections (3)(b) and (3)(c), an immigration consultant  
266 who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed,  
267 displayed, published, distributed, or broadcasted, any advertisement for services as an  
268 immigration consultant, shall include in that advertisement a clear and conspicuous statement  
269 that the immigration consultant is not an attorney.

270 (b) Subsection (3)(a) does not apply to an immigration consultant who is not licensed  
271 as an attorney in any state or territory of the United States, but is authorized by federal law to  
272 represent persons before the Board of Immigration Appeals or the United States Citizenship  
273 and Immigration Services. A person described in this Subsection (3)(b) shall include in an  
274 advertisement for services as an immigration consultant a clear and conspicuous statement that  
275 the immigration consultant is not an attorney but is authorized by federal law to represent

276 persons before the Board of Immigration Appeals or the United States Citizenship and  
277 Immigration Services.

278 (c) Subsection (3)(a) does not apply to a person who is not an active member of the  
279 Utah State Bar, but is an attorney licensed in another state or territory of the United States and  
280 is admitted to practice before the Board of Immigration Appeals or the United States  
281 Citizenship and Immigration Services. A person described in this Subsection (3)(c) shall  
282 include in any advertisement for immigration services a clear and conspicuous statement that  
283 the person is not an attorney licensed to practice law in this state, but is an attorney licensed in  
284 another state or territory of the United States, and is authorized by federal law to represent  
285 persons before the Board of Immigration Appeals or the United States Citizenship and  
286 Immigration Services.

287 (4) If an advertisement subject to this section is in a language other than English, the  
288 statement required by Subsection (3) shall be in the same language as the advertisement.

289 Section 11. Section **13-49-304** is enacted to read:

290 **13-49-304. Translations -- Prohibited acts.**

291 (1) For purposes of this section, "literal translation" of a word or phrase from one  
292 language means the translation of a word or phrase without regard to the true meaning of the  
293 word or phrase in the language that is being translated.

294 (2) An immigration consultant may not, with the intent to mislead, literally translate,  
295 from English into another language, words or titles, including, "notary public," "notary,"  
296 "licensed," "attorney," "lawyer," or any other terms that imply that the person is an attorney, in  
297 any document, including an advertisement, stationery, letterhead, business card, or other  
298 comparable written material describing the immigration consultant.

299 Section 12. Section **13-49-305** is enacted to read:

300 **13-49-305. Documents -- Consent to release -- Treatment of original documents.**

301 (1) An immigration consultant shall deliver to a client a copy of a document completed  
302 on behalf of the client. An immigration consultant shall include on a document delivered to a  
303 client the name and address of the immigration consultant.

304 (2) (a) An immigration consultant shall retain a copy of a document of a client for not  
305 less than three years from the date of the last service to the client.

306 (b) Upon presentation of a written consent signed by a client, an immigration

307 consultant shall provide a copy of the client file to law enforcement without a warrant or a  
308 subpoena.

309 (3) (a) An immigration consultant shall return to a client all original documents that the  
310 client has provided to the immigration consultant in support of the client's application including  
311 an original birth certificate, rental agreement, utility bill, employment document, a registration  
312 document issued by the Division of Motor Vehicles, or a passport.

313 (b) An original document that does not need to be submitted to immigration authorities  
314 as an original document shall be returned by the immigration consultant immediately after  
315 making a copy.

316 Section 13. Section **13-49-401** is enacted to read:

317 **Part 4. Prohibited Acts and Penalties**

318 **13-49-401. Unlawful acts.**

319 (1) It is unlawful for an immigration consultant to:

320 (a) make a false or misleading statement to a client while providing services to that  
321 client;

322 (b) make a guarantee or promise to a client, unless the guarantee or promise is in  
323 writing and the immigration consultant has some basis in fact for making the guarantee or  
324 promise;

325 (c) make a statement that the immigration consultant can or will obtain a special favor  
326 from or has special influence with the United States Citizenship and Immigration Services, or  
327 any other governmental agency, employee, or official, that may have a bearing on a client's  
328 immigration matter; or

329 (d) charge a client a fee for referral of the client to another person for services that the  
330 immigration consultant cannot or will not provide to the client.

331 (2) A sign describing the prohibition described in Subsection (1)(d) shall be  
332 conspicuously displayed in the office of an immigration consultant.

333 Section 14. Section **13-49-402** is enacted to read:

334 **13-49-402. Violations -- Actions by division.**

335 (1) The division shall investigate and take action under this part for violations of this  
336 chapter.

337 (2) A person who violates this chapter is subject to:

338 (a) a cease and desist order; and  
339 (b) an administrative fine of not less than \$100 or more than \$5,000 for each separate  
340 violation.

341 (3) An administrative fine shall be deposited in the Consumer Protection Education  
342 and Training Fund created in Section 13-2-8.

343 (4) (a) A person who intentionally violates this chapter:

344 (i) is guilty of a class A misdemeanor; and

345 (ii) may be fined up to \$10,000.

346 (b) A person intentionally violates this part if the violation occurs after the division,  
347 attorney general, or a district or county attorney notifies the person by certified mail that the  
348 person is in violation of this chapter.

349 Section 15. Section **13-49-403** is enacted to read:

350 **13-49-403. Action by attorney general or district or county attorney.**

351 (1) Upon referral from the division, the attorney general or any district or county  
352 attorney may:

353 (a) bring an action for temporary or permanent injunctive or other relief in any court of  
354 competent jurisdiction for any violation of this part;

355 (b) bring an action in any court of competent jurisdiction for the collection of penalties  
356 authorized under Subsection 13-49-402(2); or

357 (c) bring an action under Subsection 13-49-402(4).

358 (2) A court may, upon entry of final judgment, award restitution when appropriate to  
359 any person suffering loss because of a violation of this part if proof of loss is submitted to the  
360 satisfaction of the court.

361 Section 16. Section **13-49-404** is enacted to read:

362 **13-49-404. Recovery of losses.**

363 In addition to any other remedies, a person suffering pecuniary loss because of a  
364 violation by another person of this chapter may bring an action in any court of competent  
365 jurisdiction and may recover:

366 (1) the greater of \$500 or twice the amount of the pecuniary loss; and

367 (2) court costs and reasonable attorney fees as determined by the court.

368 Section 17. **Effective date.**

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This bill takes effect on July 1, 2012.

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**Legislative Review Note**  
as of 1-26-12 11:34 AM

**Office of Legislative Research and General Counsel**