

IMMIGRATION CONSULTANTS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: Jeremy A. Peterson

LONG TITLE

General Description:

This bill modifies the Immigration Consultants Registration Act.

Highlighted Provisions:

This bill:

- ▶ amends the definition provision;
- ▶ clarifies the act's application to individuals as immigration consultants;
- ▶ clarifies exemptions from the act;
- ▶ modifies bonding requirements;
- ▶ addresses when a written contract may be cancelled by a client;
- ▶ modifies exemptions from contract requirements;
- ▶ modifies disclosure requirements, including what notices are to be displayed and what disclosures are to be provided in writing;
- ▶ repeals language for providing information to law enforcement with consent of client;
- ▶ provides for investigatory powers in the division; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **13-49-102**, as last amended by Laws of Utah 2013, Chapter 124
- 31 **13-49-201**, as enacted by Laws of Utah 2012, Chapter 375
- 32 **13-49-202**, as last amended by Laws of Utah 2013, Chapter 124
- 33 **13-49-204**, as last amended by Laws of Utah 2013, Chapters 124 and 278
- 34 **13-49-301**, as enacted by Laws of Utah 2012, Chapter 375
- 35 **13-49-303**, as enacted by Laws of Utah 2012, Chapter 375
- 36 **13-49-304**, as enacted by Laws of Utah 2012, Chapter 375
- 37 **13-49-305**, as enacted by Laws of Utah 2012, Chapter 375
- 38 **13-49-402**, as last amended by Laws of Utah 2013, Chapter 124



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

41 Section 1. Section **13-49-102** is amended to read:

42 **13-49-102. Definitions.**

43 As used in this chapter:

- 44 (1) "Client" means a person who receives services from or enters into an agreement to
- 45 receive services from an immigration consultant.
- 46 (2) "Compensation" means anything of economic value that is paid, loaned, granted,
- 47 given, donated, or transferred to a person for or in consideration of:
- 48 (a) services;
- 49 (b) personal or real property; or
- 50 (c) another thing of value.
- 51 (3) "Department" means the Department of Commerce.
- 52 (4) "Division" means the Division of Consumer Protection in the department.
- 53 (5) "Immigration consultant" means ~~[a person]~~ an individual who provides nonlegal
- 54 assistance or advice on an immigration matter including:
- 55 (a) completing a document provided by a federal or state agency, but not advising a
- 56 person as to the person's answers on the document;
- 57 (b) translating a person's answer to a question posed in a document provided by a
- 58 federal or state agency;

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

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

63 (e) for valuable consideration, referring a person to a person who could undertake legal
64 representation activities in an immigration matter.

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

67 (a) immigration and naturalization law;

68 (b) executive order or presidential proclamation; or

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

71 Section 2. Section 13-49-201 is amended to read:

72 **13-49-201. Requirement to be registered as an immigration consultant --**

73 **Exemptions.**

74 (1) (a) Except as provided in Subsection (1)(b), [~~a person~~] an individual may not
75 engage in an activity of an immigration consultant for compensation unless the [~~person~~]
76 individual is registered under this chapter.

77 (b) [~~Subsection (1)(a)~~] Except for Subsections 13-49-303(3) and (4), this chapter does
78 not apply to [~~a person~~] an individual authorized:

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

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

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

84 Section 3. Section 13-49-202 is amended to read:

85 **13-49-202. Application for registration.**

86 (1) To register as an immigration consultant [~~a person~~] an individual shall:

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

88 (b) pay an annual registration fee determined by the department in accordance with

89 Section 63J-1-504, which includes the costs of the criminal background check required under

90 Subsection (1)(e);

91 (c) have good moral character in that the [~~applicant~~] individual has not been convicted
92 of:

93 (i) a felony; or

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

95 (d) submit fingerprint cards in a form acceptable to the division at the time the
96 application is filed; and

97 (e) consent to a fingerprint background check of the individual by the Utah Bureau of
98 Criminal Identification regarding the application.

99 (2) The division shall register [~~a person~~] an individual who qualifies under this chapter
100 as an immigration consultant.

101 Section 4. Section **13-49-204** is amended to read:

102 **13-49-204. Bonds -- Exemption -- Statements dependent on posting bond.**

103 (1) [~~Except as provided in Subsection (6), an~~] An immigration consultant shall post a
104 cash bond or surety bond:

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

106 (b) payable to the division for the benefit of any person damaged by a fraud,
107 misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an
108 immigration consultant, or an agent, representative, or employee of an immigration consultant.

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

110 (a) in a form approved by the [~~attorney general~~] division; and

111 (b) conditioned upon the faithful compliance of an immigration consultant with this
112 chapter and division rules.

113 (3) An immigration consultant shall keep the bond required under this section in force
114 for one year after the immigration consultant's registration expires or the immigration
115 consultant notifies the division in writing that the immigration consultant has ceased all
116 activities regulated under this chapter.

117 (4) (a) If a surety bond posted by an immigration consultant under this section is
118 canceled due to the [~~person's~~] immigration consultant's negligence, the division may assess a
119 \$300 reinstatement fee.

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

121 withdrawn:

122 (i) during the one-year period the registration under this chapter is in effect; or

123 (ii) while a revocation proceeding is pending against the [person] immigration
124 consultant.

125 (5) (a) A bond posted under this section by an immigration consultant may be forfeited
126 if the [person's] immigration consultant's registration under this chapter is revoked.

127 (b) Notwithstanding Subsection (5)(a), the division may make a claim against a bond
128 posted by an immigration consultant for money owed the division under this chapter without
129 the division first revoking the immigration consultant's registration.

130 ~~[(6) The requirements of this section do not apply to an employee of a nonprofit,~~
131 ~~tax-exempt corporation who assists clients to complete an application document in an~~
132 ~~immigration matter, free of charge or for a fee, including reasonable costs, consistent with that~~
133 ~~authorized by the Board of Immigration Appeals under 8 C.F.R. Sec. 292.2.]~~

134 ~~[(7) A person]~~ (6) An individual may not disseminate by any means a statement
135 indicating that the [person] individual is an immigration consultant, engages in the business of
136 an immigration consultant, or proposes to engage in the business of an immigration consultant,
137 unless the [person] individual has posted a bond under this section that is maintained
138 throughout the period covered by the statement~~[, such as a listing in a telephone book].~~

139 ~~[(8)]~~ (7) An immigration consultant may not make or authorize the making of an oral
140 or written reference to the immigration consultant's compliance with the bonding requirements
141 of this section except as provided in this chapter.

142 Section 5. Section **13-49-301** is amended to read:

143 **13-49-301. Requirements for written contract -- Prohibited statements.**

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

148 (b) A client may ~~[rescind]~~ cancel a written contract ~~[within 72 hours of]~~ on or before
149 midnight of the third business day after execution of the written contract, excluding weekends
150 and state and federal holidays.

151 (2) A written contract under this section shall be stated in both English and in the

152 client's native language.

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

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

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

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

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

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

160 (i) list the document to be prepared;

161 (ii) explain the purpose of the document;

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

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

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

165 (vi) state the approximate processing times according to current published agency
166 guidelines;

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

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

170 (ii) Office of Immigrant Assistance of the United States Department of Justice,
171 including a toll-free telephone number and Internet [~~web site~~] website;

172 (g) include a provision stating that complaints concerning the unauthorized practice of
173 law may be reported to the Utah State Bar, including a toll-free telephone number and Internet
174 [~~web site~~] website; and

175 (h) in accordance with Subsection (1)(b), include a provision stating [~~that a client~~] in
176 bold on the first page of the written contract in both English and in the client's native language
177 in accordance with Subsection (2): "You may [~~rescind the~~] cancel this contract [~~within 72~~
178 hours of signing the contract.] on or before midnight of the third business day after execution
179 of the written contract."

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

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

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

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

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

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

194 Section 6. Section **13-49-303** is amended to read:

195 **13-49-303. Notice to be displayed -- Disclosure to be provided in writing.**

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

200 (a) the full name, address, and evidence of compliance with any applicable bonding
 201 requirement including the bond number~~[-if any];~~

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

203 ~~[(c) the services that the immigration consultant provides and the current and total fee~~
 204 ~~for each service; and]~~

205 ~~[(d)]~~ (c) the name of each immigration consultant employed at each location.

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

208 ~~[(a)]~~ (i) the immigration consultant's name, address, and telephone number;

209 ~~[(b)]~~ (ii) the immigration consultant's agent for service of process;

210 ~~[(c) the legal name of the employee who consults with the client, if different from the~~
 211 ~~immigration consultant; and]~~

212 ~~[(d)]~~ (iii) evidence of compliance with any applicable bonding requirement, including
 213 the bond number~~[-if any];~~ and

214 (iv) a list of the services that the immigration consultant provides and the current and
215 total fee for each service.

216 (b) An immigration consultant shall obtain the signature of the client verifying that the
217 client received the written disclosures described in Subsection (2)(a) before a service is
218 provided.

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

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

232 (c) Subsection (3)(a) does not apply to a person who is not an active member of the
233 Utah State Bar, but is an attorney licensed in another state or territory of the United States and
234 is admitted to practice before the Board of Immigration Appeals or the United States
235 Citizenship and Immigration Services. A person described in this Subsection (3)(c) shall
236 include in any advertisement for immigration services a clear and conspicuous statement that
237 the person is not an attorney licensed to practice law in this state, but is an attorney licensed in
238 another state or territory of the United States, and is authorized by federal law to represent
239 persons before the Board of Immigration Appeals or the United States Citizenship and
240 Immigration Services.

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

243 Section 7. Section **13-49-304** is amended to read:

244 **13-49-304. Translations -- Prohibited acts.**

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

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

253 Section 8. Section **13-49-305** is amended to read:

254 **13-49-305. Documents -- Treatment of original documents.**

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

258 (2) ~~[(a)]~~ An immigration consultant shall retain a copy of a document of a client for not
259 less than three years from the date of the last service to the client.

260 ~~[(b) Upon presentation of a written consent signed by a client, an immigration~~
261 ~~consultant shall provide a copy of the client file to law enforcement without a warrant or a~~
262 ~~subpoena.]~~

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

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

270 Section 9. Section **13-49-402** is amended to read:

271 **13-49-402. Violations -- Actions by division.**

272 ~~[(1) The division shall investigate and take action under this part for violations of this~~
273 ~~chapter.]~~

274 (1) The division may make an investigation the division considers necessary to
275 determine whether a person is violating, has violated, or is about to violate this chapter or any

276 rule made or order issued under this chapter. As part of the investigation, the division may:

277 (a) require a person to file a statement in writing;

278 (b) administer oaths, subpoena witnesses and compel their attendance, take evidence,
279 and examine under oath any person in connection with an investigation; and

280 (c) require the production of any books, papers, documents, merchandise, or other
281 material relevant to the investigation.

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

283 (a) a cease and desist order; and

284 (b) an administrative fine of not less than \$1,000 or more than \$5,000 for each separate
285 violation.

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

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

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

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

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

Legislative Review Note
as of 2-12-15 3:26 PM

Office of Legislative Research and General Counsel