

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



OFFICE OF THE
SECRETARY
2016 APR 29 AM 11:42
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April 29, 2016

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to transmit the “Immigration Services Protection Act of 2016” to the Council of the District of Columbia for consideration. This legislation combats *notario fraud*, which mainly takes advantage of immigrant communities. In Latin American countries, “notarios publicos,” which translates to “notaries public,” can practice certain matters of law. Dishonest immigration consultants will mislead consumers with the “notary public” title, often misrepresenting their qualifications. Many non-citizens find out that they will never obtain a green card, legal immigration status, or other benefits because an unqualified immigration consultant or notario fraudster, unlawfully working as an immigration lawyer, gave them incorrect advice.

This legislation contains several provisions that will help protect consumers from notario fraud:

- It permits only licensed attorneys, individuals qualified under 8 C.F.R. § 292.1, non-profit organizations, and legal clinics to perform immigration services;
- It requires services to be performed before the immigration services provider may charge a fee;
- It imposes contractual requirements and mandates that consumers have access to all documents prepared on their behalf; and
- It makes a violation of the act’s provisions an unlawful practice subject to the remedies provided under the District’s Consumer Protection Procedures Act; those remedies include fines, restitution and other penalties.

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The legislation grew out of the work the Office of the Attorney General does with the Council for Court Excellence's Notario Fraud Identification and Enforcement Working Group. This group works to share information about notario fraud-related scams that target immigrants, coordinate advocacy, and collaborate enforcement actions. The group includes local and federal law enforcement, non-profits and advocacy groups. The Hispanic Bar Association of D.C. collaborated with the Office of the Attorney General in drafting the legislation.


If you have any questions, your staff may contact my Legislative Director, James A. Pittman, on (202) 724-6517.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Racine', with a stylized flourish at the end.

Karl A. Racine

Attorney General for the District of Columbia


Councilmember Phil Mendelson
at the request of the Attorney General

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 28 of the District of Columbia Official Code to prohibit persons who provide immigration services from making certain misrepresentations, providing legal advice, collecting fees for services not performed, refusing to return documents, to require persons who provide immigration services to make certain disclosures in contracts, and to provide for enforcement of rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Immigration Services Protection Act of 2016”.

Sec. 2. Title 28 of the District of Columbia Code is amended as follows:

(a) The table of contents for the title is amended by adding a new chapter after

Chapter 52 to read as follows:

“Chapter 53. Immigration Services Protection.

“§ 28-5301. Definitions.

“§ 23-5302. Exemptions.

“§ 28-5303. Prohibited practices; required disclosures.

“§ 28-5304. Contracts.

“§ 28-5305. Enforcement; private right of action.

“§ 28-5306. Rules.”.

32 (b) A new chapter 53 is added to read as follows:

33 “Chapter 53. Immigration services protection.

34 “§ 28-5301. Definitions.

35 “ As used in this Act, the term or terms:

36 (1) “Client” or “consumer” means any noncitizen or any person seeking
37 to sponsor a noncitizen for whom an immigration service provider performs or offers to
38 perform a service relating to the noncitizen’s immigration status.

39 (2) “Immigration matter” means any legal proceeding, filing, or action
40 that affects the immigration status of a noncitizen and arises under any federal
41 immigration law, presidential order, federal executive agency action, or proclamation by
42 a foreign country.

43 (3) “Immigration service” means any service relating to an immigration
44 matter.

45 (4) “Legal advice” or “legal service” means the legal representation of a
46 person, which includes providing forms to a person, completing or filing forms on behalf
47 of a person, advising a person to file forms, or applying for a benefit on behalf of a
48 person.

49 (5) “Immigration services provider” means a person who provides
50 nonlegal advice, guidance, information, or services to a client or consumer on an
51 immigration matter for a fee.”.

52 “§ 23-5302. Exemptions

53 “This subtitle does not apply to:

54 (1) An attorney licensed to practice law in the United States;

55 (2) An individual authorized to represent individuals in immigration matters under

56 8 C.F.R. § 292.1;

57 (3) A nonprofit organization that has been recognized under 8 C.F.R. § 292.2; or

58 (4) A clinic affiliated with an accredited law school in the District of Columbia.”

59 “§ 28-5303. Prohibited practices; required disclosures.

60 “An immigration services provider may not:

61 (1) Provide legal advice or legal services concerning an immigration

62 matter;

63 (2) Make a misrepresentation or false statement to influence, persuade, or

64 encourage a client to use services provided by the immigration services provider;

65 (3) Make a statement that the immigration services provider can or will

66 obtain special favors from or has special influence with the United States Department of

67 Homeland Security, the United States Department of Labor, the United States Department of

68 State, the United States Department of Justice, the United States Department of Commerce,

69 or any other agency, office, or instrumentality of the United States government;

70 (4) Collect any fees or other compensation for services not yet performed;

71 (5) Refuse to return documents supplied by, prepared by, or paid for by a

72 client, at the client's request; or

73 (6) Represent, advertise, or communicate in any manner that the immigration

74 services provider possesses titles or credentials that would qualify the immigration services

75 provider to provide legal advice or legal services.”.

76 “§ 28-5304. Contracts.

77 “(a) Before providing any immigration services, an immigration services

78 provider shall execute a written contract with the client that includes:

79 (1) A detailed explanation of the services to be performed;

80 (2) An itemization of all fees to be charged to the client;

81 (3) A statement that the client has the right to consult an attorney before
82 signing the contract;

83 (4) A statement that the client has the right to rescind the contract within 72
84 hours of signing, which shall be in immediate proximity to the space reserved in the contract
85 for the client's signature and shall be in at least 12 point bold-face type;

86 (5) The statement, "I am not an attorney licensed to practice law in the
87 District of Columbia, and may not provide legal forms, provide legal advice, or provide legal
88 services," which shall be in immediate proximity to the space reserved in the contract for the
89 client's signature and shall be in at least 12 point bold-face type; and

90 (6) The statement, "I cannot accept a fee for referring a client to another
91 person for services that I cannot or will not perform", which shall be conspicuously placed in
92 the contract in at least 12 point type.

93 (b) The written contract required under this section shall be in English and in each
94 language in which the immigration services provider provides services.

95 (c) The immigration services provider shall provide a copy of the contract to the
96 client on execution.

97 (d) The immigration services provider shall return any documents provided by the
98 client at the client's request, even in the event of a fee dispute."

99 "§ 28-5305. Enforcement; private right of action.

100 (a) Failure to comply with the requirements of this subtitle shall be an unlawful
101 trade practice under Chapter 39 of this Title.

102 (b) Any person who violates any provision of this subtitle is guilty of a
103 misdemeanor and, unless another criminal penalty is specifically provided elsewhere, on
104 conviction is subject to a fine not exceeding \$3,000.00 or imprisonment not exceeding 6

105 months, in addition to any civil penalties.

106 (c) The rights and remedies available under this section are cumulative to each
107 other and to any other rights and remedies available under law.

108 (d) The fine set forth in this section shall not be limited by section 101 of the
109 Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C.
110 Law 19-317; D.C. Official Code § 22-3571.01).”.

111 “§ 28-5306. Rules.

112 The Attorney General may issue rules to implement this chapter.

113 (c) Section 28-3904 is amended as follows:

114 (1) Strike the word “or” in subsection (gg); and

115 (2) Strike the phrase “§ 26-1113(a-1).” at the end of subsection (hh) and
116 insert the phrase “§ 26-1113(a-1); or violate any provision of Chapter 53.” in its place.

117 Sec. 3. Fiscal impact statement.

118 The Council adopts the attached fiscal impact statement as the fiscal impact
119 statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
120 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

121 Sec. 4. Effective date.

122 This act shall take effect following approval by the Mayor (or in the event of veto
123 by the Mayor, action by the Council to override the veto), a 30-day period of
124 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
125 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
126 602.02(c)(1)), and publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

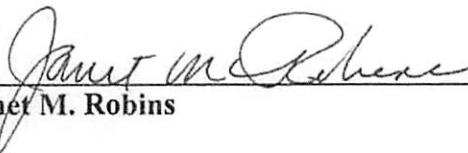
TO: James A. Pittman
Director of Legislative & Government Affairs
Office of Attorney General for the District of Columbia

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: April 28, 2016

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Immigration Services Protection Act of 2016"
(AM-16-093-D)

This is to Certify that this Office has reviewed the above-referenced draft proposed bill and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins