CHAPTER 83

Registration of Immigration Assistance Service Act

**SECTION 40‑83‑10.** Citation of act.

 This act shall be cited as the “Registration of Immigration Assistance Service Act”.

HISTORY: 2008 Act No. 280, Section 13.

**SECTION 40‑83‑20.** Definitions.

 As used in this chapter, the term:

 (A) “Compensation” means money, property, services, promise of payment, or anything else of value given in exchange for a service.

 (B) “Director” means the Director of the South Carolina Department of Labor, Licensing and Regulation, or his designee.

 (C) “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 that a person receives compensation from the employer on a commission basis or as an independent contractor.

 (D) “Immigration assistance service” means 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 other assistance that requires legal analysis, legal judgment, or interpretation of the law.

 (E) “Immigration matter” means a proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

 (1) immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

 (2) action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

HISTORY: 2008 Act No. 280, Section 13.

**SECTION 40‑83‑30.** Immigration services permitted; persons exempt from chapter; required disclosures; penalties; promulgation of regulations.

 (A) A person who provides or offers to provide immigration assistance service shall 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 that 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 commissioned in the State of South Carolina and is lawfully present in the United States;

 (7) making referrals, without a 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; and

 (11) performing other services that the director determines by rule may be appropriately performed by such persons in light of the purposes of this chapter.

 (B) The following persons are exempt from this chapter:

 (1) an attorney licensed to practice law in South Carolina or an attorney licensed to practice law in another state or territory of the United States or in a foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

 (2) a legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in item (1) of this subsection and rendering immigration assistance service in the course of employment; or

 (3) a not‑for‑profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a), to include, but not be limited to, religious, charitable, social service, or similar organizations, and employees of those organizations accredited under 8 C.F.R. 292.2(d).

 (C) This chapter does not regulate any business to the extent that such regulation is prohibited or preempted by federal law.

 (D) A person performing the services described in this chapter shall obtain a business license from the Department of Labor, Licensing and Regulation, and as may be required by a local governing authority.

 (E) A person who provides or offers immigration assistance service and is not exempted under this chapter 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 twelve inches by seventeen inches and shall contain the following statement:

 “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

 (F) Each 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, must 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 font size, if in writing, and shall state:

 “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

 If an advertisement is by radio or television, the statement may be modified but must include substantially the same information.

 (G) A person who provides or offers immigration assistance service and who is not exempted pursuant to the provisions of this chapter may not literally translate from English into another language any document, advertisement, stationery, letterhead, business card, or other comparable written material terms or titles including, but not limited to, notary public, notary, licensed attorney, lawyer, or another term that implies the person is an attorney.

 (H) A person engaged in providing immigration services who is not exempted under this chapter may not:

 (1) accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

 (2) 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;

 (3) represent or advertise, in connection with providing assistance in immigration matters, other titles or 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 certified notary public may use the term “notary public” if the use is accompanied by the statement that the person is not an attorney. The term “notary public” may not be translated into another language;

 (4) 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; or

 (5) make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

 (I) Violations of this chapter may result in a civil penalty of up to one thousand dollars per violation and the revocation of the business license of the immigration assistance service. A fine charged pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal penalties to include disgorgement and restitution.

 (J) Any person who knowingly and wilfully makes a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter, or anyone who aids or abets a person in knowingly and wilfully making a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter, or who solicits or conspires to make a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter shall be guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. In addition, a person convicted of this subsection must disgorge any benefit received or make restitution, or both, to the agency or political subdivision that administered the benefit or entitlement program. It is a separate violation of this subsection each time a person knowingly and wilfully makes, aids, or abets in the making of, or solicits or conspires to make a false, fictitious, or fraudulent statement or representation in any document prepared or executed pursuant to this subsection. A criminal charge pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal charges or penalties. A person who suffers any ascertainable loss of money or property, real or personal, as a result of a conviction or plea to a violation of this subsection may bring an action individually, or in a representative capacity, to recover actual damages from any person convicted of the violation of this subsection. If the court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary or proper. Upon the finding by the court of a violation, the court shall award to the person bringing such action under this section reasonable attorney’s fees and costs.

 (K) Persons convicted of a violation of this subsection are jointly and severally liable for any loss suffered by any person or any agency or political subdivision of the State.

 (L) The director shall promulgate regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

 (M) This chapter shall not apply to anyone employed by or working for an educational institution who is registered as a designated school official with the SEVIS program, or a successor program, operated by the United States Department of Homeland Security.

HISTORY: 2008 Act No. 280, Section 13.

CROSS REFERENCES

Regulations pertaining to registration of Immigration Assistance Services, see S.C. Code of Regulations R. 71‑10000 et seq.

Library References

Licenses 11(1), 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55, 64, 77.