

Registration of Immigration Assistance Act

CHAPTER 20A

43-20A-1.

This chapter shall be known and may be cited as the 'Registration of Immigration Assistance Act.'

43-20A-2.

As used in this chapter, the term:

(1) 'Advertise' or 'advertising' means any communication, written or otherwise, produced or caused to be produced by a person licensed pursuant to this chapter promoting the goods or services regulated by this chapter.

(2) 'Alien' means any person not a citizen of the United States.

(3) 'Application' means any forms, documents, and information required pursuant to this chapter that applicants are required to file with the Secretary of State.

(4) 'Client' shall mean any person seeking immigration assistance.

(5) 'Compensation' means money, property, services, promise of payment, or any other consideration or anything of value.

(6) 'Immigrant' means every alien with the exception of an alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(7) 'Immigration assistance' means any service provided to clients for compensation related to immigration matters, but shall not include legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or the interpretation of the law.

(8) 'Immigration assistance provider' means any person who is licensed to provide immigration assistance pursuant to this chapter.

(9) 'Immigration matter' means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

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

(B) 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.

(10) 'Nonimmigrant' means any alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(11) 'Order' means, but is not limited to, an administrative order issued under the provisions of this chapter or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self-regulatory organization that makes a finding that the provisions of this chapter have been violated and sanctions administered.

(12) 'Person' means any individual, partnership, corporation, association, or private organization of any character, but not a governmental entity of any kind.

43-20A-3.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not exempted by this chapter. This chapter shall be administered and enforced by the Secretary of State. The Secretary of State may delegate such of his or her powers or duties under this chapter as he or she desires to a division director in his or her office. With

respect to the enforcement of this chapter, the Secretary of State shall retain all powers and duties and may perform all functions of the licensing boards as provided in Chapter 1 of this title.

43-20A-4.

(a) A person shall not provide immigration assistance in this state without holding a license issued pursuant to this chapter as an immigration assistance provider.

(b) Any person desiring to be licensed as an immigration assistance provider shall file an application for such license with the Secretary of State. All original and subsequent applications filed with the Secretary of State shall be upon such form and in such detail as the Secretary of State shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the Secretary of State shall require.

(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants and licensees as part of an application filed with the Secretary of State, shall be confidential. The Secretary of State shall deem as public records the following information and shall make such information reasonably available for inspection by the general public: a licensee's name, license number and status, business name,

business address, business telephone number, type of license held, and term of license; the fact that a licensee has or has not received a disciplinary sanction; and such other information pertaining to the license of a licensee as the Secretary of State may determine by rule.

(d) No person shall be granted a license as an immigration assistance provider unless such person:

(1) Is 18 years of age or older;

(2) Is a United States citizen or holds a valid legal immigration status pursuant to federal law;

(3) Provides a criminal background report and, within the five-year period preceding the date of the application, has no criminal convictions, other than traffic violations;

(4) Completes and submits an application;

(5) Provides proof of a \$5,000.00 performance bond issued in a form acceptable to the Secretary of State by a bonding company licensed to conduct bonding business in the State of Georgia; and

(6) If an applicant intends to provide services which shall require him or her to control the legal funds of a client seeking immigration assistance, provides a financial statement for the current fiscal year.

(e) The Secretary of State shall establish an appropriate procedure for the acceptance and review of applications submitted pursuant to subsection (b) of this Code section.

(f) All immigration assistance providers holding licenses in good standing shall be eligible for the renewal of such license pursuant to procedures established by the Secretary of State. In the event a licensee fails to renew his or her license, such license shall be automatically revoked.

43-20A-5.

(a) An immigration assistance provider licensee may perform the following services as immigration assistance:

(1) Completing a government agency form on behalf of the client and appropriate to the client's needs;

(2) Transcribing responses to a government agency form which is related to an immigration matter; provided, however, that advice shall not be offered to a client as to his or her answers on such forms;

(3) Translating information on forms to a client and translating the client's answers to questions posed on such forms;

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

(5) Notarizing signatures on government agency forms, provided that the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(6) Preparing or arranging for the preparation of photographs and fingerprints;

(7) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results; and

(8) Performing such other services that the Secretary of State determines by rule may be appropriately performed by such licensees in light of the purposes of this chapter.

(b) A contract to provide any service in conjunction with immigration assistance shall clearly state the obligations of the immigration assistance provider and the client who is to receive such service.

43-20A-6.

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

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any 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 or independently contracted by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance in the course of employment;

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

(4) Any person employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide nonlegal advice in conjunction with immigration assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such nonlegal advice in conjunction with immigration assistance is provided.

(b) Any person who provides or offers immigration assistance and is not exempted pursuant to this Code section 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. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to clients. Each sign shall be at least 12 inches by 17 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.'

(c) Every person engaged in immigration assistance that is not an attorney and that advertises immigration assistance in a language other than English shall include conspicuously in such advertisement the following notice in English and the language in which the advertisement appears: 'I AM

NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.' If such advertisement is by radio or television, the statement may be modified but shall include substantially the same message.

(d) Any person who provides or offers immigration assistance that is not exempted pursuant to this Code section shall not, in any document identifying such person as an immigration assistance provider, translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(e) A person engaged in providing immigration assistance that is not exempted pursuant this Code section as a licensed attorney shall not:

(1) Refuse to return documents supplied by, prepared on behalf of, or paid for by the client upon the request of the client. Such documents shall be returned upon request even if there is a fee dispute between such person and the client;

(2) Represent or advertise, in conjunction with immigration assistance, other titles or credentials, including but not limited to 'notary public' or 'immigration consultant,' that could cause a client to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided, however, 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 and the term 'notary public' is not translated to another language; or

(3) Provide materially false or misleading information in an application for licensure or renewal of a license.

43-20A-7.

(a) The Secretary of State may assess civil penalties against any individual or entity that he or she finds to have violated this chapter in an amount of up to \$1,000.00 per violation not to exceed \$50,000.00. A civil penalty assessed pursuant to this Code section shall be in addition to any other appropriate civil or criminal penalties.

(b) Any person that suffers injuries or damages as a result of the unlawful practice of immigration assistance shall have a cause of action against the person or entity that provided the unlawful immigration assistance.

(c) The Secretary of State shall issue rules and regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter.

43-20A-8.

(a) The Secretary of State shall maintain all documents filed with the Secretary of State pursuant to this chapter in their original form or by copy.

(b) All documents filed with the Secretary of State pursuant to a subpoena, an order, or a notice to produce issued by the Secretary of State or any records or documents produced relating to an investigation pursuant to Code Section 43-20A-15 may be destroyed by order of the Secretary of State once the investigative file is closed, if a demand for return is not made by the person producing such records at the time he, she, or it produces the records.

(c) Any reproduction of any original writing or record filed with, or maintained by, the Secretary of State, or other filing depository designated by the Secretary of State, shall be deemed to have been made in the regular course of business. Such reproduction shall be subject to certification.

(d) All immigration assistance providers who are licensed or required to be licensed with the Secretary of State shall preserve records documenting compliance pursuant to this chapter for at least three years

from the date such records were produced. Immigration assistance providers shall preserve client records that contain certain necessary information in a manner to be determined by the Secretary of State. Such records shall be subject to reasonable periodic or special inspections by the Secretary of State. An inspection may be made at any time and without prior notice. The Secretary of State may copy and remove any record the Secretary of State reasonably considers necessary or appropriate to conduct the inspection.

43-20A-9.

(a) Any immigration assistance provider shall report in writing immediately to the Secretary of State if:

(1) He or she has been made or is the subject of any disciplinary, administrative, civil, or criminal action;
and

(2) He or she has been served in any civil complaint or arbitration filed alleging fraud or any violation of any local, state, or federal law.

(b) The immigration assistance provider shall provide to the Secretary of State a copy of any notice, order, pleading, indictment, accusation, or similar legal document relating to an action subject to subsection (a) of this Code section that he or she has in his or her possession.

43-20A-10.

The Secretary of State shall be authorized to charge a license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged. Each fee shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the Secretary of State shall approximate the total of the direct and indirect costs to the state of the operations involved in the issuance of a license. Fees may be refunded for good cause, as determined by the Secretary of State.

43-20A-11.

Should material events or developments occur after a person has been granted a license pursuant to this chapter, such person shall amend the license application submitted pursuant to Code Section 43-20A-4 by adding statements of fact that developed, or became known, after the effective date of such application and by deleting statements of fact that, because of such developments, may be misleading. Such additions and deletions shall be filed with the Secretary of State not more than 30 days after their occurrence.

43-20A-12.

(a) As used in this Code section, the term 'service member' means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to this chapter expires while such service member is serving on active duty outside the state shall be permitted to practice as an immigration assistance provider in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing as an immigration assistance provider with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. Such service member shall present to the Secretary of State either a copy of the official military orders or a written verification signed by the service member's commanding officer in order for the Secretary of State to waive any charges.

43-20A-13.

For the purposes of investigating violations of this chapter, the Secretary of State shall be authorized to employ investigators pursuant to Code Section 43-1-5.

43-20A-14.

Notwithstanding the provisions of Code Section 43-1-19, the Secretary of State shall be authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure. Nothing in this chapter shall be construed to prohibit or limit the authority of the Secretary of State to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure.

43-20A-15.

(a) The Secretary of State shall be authorized to issue a formal order of investigation. Such order shall commence an investigation to determine whether any person is in violation of this chapter or to aid in the enforcement of this chapter.

(b) The Secretary of State shall be authorized to take any administrative action authorized by law to enforce the provisions of this chapter. The Secretary of State shall be authorized to transmit a civil or criminal referral investigative report and evidence of violations of this chapter to any prosecuting attorney or to the Attorney General, who may, at his or her individual discretion, institute any necessary civil or criminal proceedings.

(c) Notwithstanding any other provision of this chapter, an emergency order pursuant to this Code section shall be effective on the date of issuance, provided that:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings, which shall be promptly instituted; or

(2) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d) Upon issuance of the notice and proposed order, pursuant to this Code section, the Secretary of State shall promptly serve each person subject to the order with a copy of the notice and proposed order. The order shall include a statement of any administrative sanctions that the Secretary of State will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled pursuant to the provisions of Code Sections 50-13-18 and 50-13-41. Hearings shall be conducted by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50. If a person subject to the order does not request from the Office of State Administrative Hearings a hearing within 30 days after the date of service of the notice and proposed order, the order shall become final as to that person by operation of law. If any person subject to the emergency order requests a hearing, or is ordered by the Secretary of State, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Secretary of State may modify, vacate, or extend the emergency order any time prior to a final determination.

43-20A-16.

(a) The Secretary of State shall order the discipline, denial, suspension, or revocation of license issued pursuant to this chapter, if the Secretary of State finds that the order is in the public interest and that such person:

(1) Has filed an application for licensure with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, contained a statement that was, in light of the circumstances under which it was made, false with respect to a material fact in the application;

(2) Has violated or failed to comply with any provisions of this chapter;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by any government agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the law of another state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Has been convicted of any felony in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (5) of this subsection, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction' shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(5) Within the last ten years has been convicted of a felony or misdemeanor involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States, the record of conviction being conclusive evidence of conviction, which the Secretary of State finds:

(A) Involves the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of immigration assistance; or

(C) Involves the theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(6) Is the subject of an order of the Secretary of State that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(7) Is the subject of any of the following orders which are effective at the time of the Secretary of State's order and were issued within five years before the Secretary of State's order:

(A) An order by an agency or administrator of another state, a foreign country, or the federal government, entered after notice and opportunity for hearing, that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(B) A United States Postal Service fraud order; or

(C) A cease and desist order entered after notice and opportunity for hearing by the Secretary of State or other state or federal authority;

(8) Is determined by the Secretary of State not to be qualified pursuant to this chapter;

(9) Violated or conspired to violate this chapter;

(10) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity;

(11) Has failed to cure any application deficiency within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State shall vacate an order pursuant to this paragraph when the deficiency is corrected, unless the applicant has abandoned the application;

(12) Has failed to comply with an order for child support as defined by Code Section 19-11-9.3. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this subsection; or

(13) Has been found by the Secretary of State pursuant to notice by the Georgia Higher Education Assistance Corporation that the applicant for or holder of such license is a borrower in default who is not

in satisfactory repayment status as defined in Code Section 20-3-295. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this subsection.

(b) Prior to issuing an order pursuant to subsection (a) of this Code section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred;

(3) The degree of harm imposed upon others; and

(4) Any other relevant conduct of the applicant.

(c) If the Secretary of State determines that a licensee is no longer in existence or acting as an immigration assistance provider, the subject of an adjudication of incapacity, subject to the control of a trustee, conservator, or guardian, or cannot reasonably be located, the Secretary of State may issue an order that cancels or terminates the license. The Secretary of State may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive.

(d) An order issued pursuant to subsection (a) of this Code section shall constitute a final order, shall be deemed to be in the public interest, and shall not be deemed to constitute findings of fact or conclusions of law related to other persons. The entry of such an order shall not be deemed to be a waiver or estoppel on the part of the Secretary of State from proceeding in individual actions against any persons who may have violated this chapter, nor shall such an order prevent the Secretary of State from bringing individual actions against any persons who have violated this chapter, if such violation was not known to the Secretary of State at the time the order was issued.

(e) An order is not a proceeding or enforcement action pursuant to Chapter 13 of Title 50.

43-20A-17.

The Secretary of State shall suspend a license issued pursuant to this chapter if reported to the Secretary of State for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. Prior to a suspension, the licensee shall be entitled to notice of the Secretary of State's intended action and opportunity to appear before the Secretary of State according to procedures set forth by the Secretary of State. A suspension of a license pursuant to this Code section shall not be a contested case under Chapter 13 of Title 50. A license suspended pursuant to this Code section shall not be reinstated or reissued until the person arranges for a written release to be issued by the reporting agency directly to the Secretary of State stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If such person has continued to meet all other requirements for licensure during the period of suspension, reinstatement of the license shall be automatic upon receipt of the notice and payment of any reinstatement fee which the Secretary of State may impose.

43-20A-18.

(a) The Secretary of State may issue a cease and desist order prohibiting a person from violating the provisions of this chapter by engaging in the practice of immigration assistance without a license issued pursuant to this chapter. Such cease and desist order shall become effective immediately upon signature of the Secretary of State and proper notice pursuant to this chapter.

(b) The violation of any order issued pursuant to subsection (a) of this Code section shall subject such person violating the order to further proceedings before the Secretary of State, and the Secretary of State shall be authorized to impose a civil penalty not to exceed \$500.00 for each transaction constituting a violation thereof. Such civil penalty shall be in addition to any other fines and penalties subject to

committing a violation pursuant to this subsection. Each day that a person practices in violation of this subsection shall constitute a separate violation.

(c) Nothing in this Code section shall be construed to prohibit the Secretary of State from bringing remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

43-20A-19.

(a) Where the Secretary of State has issued any order to discipline, deny, suspend, or revoke a license of an applicant or person licensed pursuant to this chapter, he or she shall promptly send to the respondent to such order a notice of opportunity for hearing. Before entering an order refusing to issue a license pursuant to this chapter to any person and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person a notice of opportunity for hearing.

(b) Notices of opportunity for hearing shall be served personally by investigators appointed by the Secretary of State, sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on the licensee's application, or directed for service to the sheriff of the county where such person resides or is found; and such notice shall state:

(1) The order which has issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order;

(3) A statement of the right of any party to subpoena witnesses and documentary evidence through the Secretary of State;

(4) That the person to whom such notice is sent will be afforded a hearing in accordance with the Code Sections 50-13-18 and 50-13-41; and

(5) Contested cases shall be heard by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50.

(c) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall set forth his or her findings and conclusions of laws with respect to the matters involved.

43-20A-20.

Any individual licensed pursuant to this chapter who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction.

43-20A-21.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor for a first offense and a high and aggravated misdemeanor for a second or subsequent offense committed within five years of a previous conviction for the same offense."