

# MAINE STATE LEGISLATURE

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STATE HOUSE  
AUGUST 1996

1  
Date: 4/10/06  
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L.D. 1996  
(Filing No. H-977)

3 **Judiciary**

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5 **STATE OF MAINE**  
6 **HOUSE OF REPRESENTATIVES**  
7 **122ND LEGISLATURE**  
8 **SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT **A** to H.P. 1398, L.D. 1996, Bill, "An Act To  
10 Prevent Unauthorized Practice of Immigration and Nationality Law"

11 Amend the bill by striking out everything after the title and before the summary and  
12 inserting in its place the following:

13 **'Emergency preamble. Whereas,** acts of the Legislature do not become effective  
14 until 90 days after adjournment unless enacted as emergencies; and

15 **Whereas,** the unauthorized practice of immigration and nationality law in the State  
16 has resulted in the loss of rights of and severe damages to the people of the State and  
17 constitutes an ongoing threat to those rights and the well-being of the public; and

18 **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
19 the meaning of the Constitution of Maine and require the following legislation as  
20 immediately necessary for the preservation of the public peace, health and safety; now,  
21 therefore,

22 **Be it enacted by the People of the State of Maine as follows:**

23 **Sec. 1. 4 MRSA §807-B** is enacted to read:

24 **§807-B. Authorized immigration and nationality law assistance**

25 **1. Short title.** This section may be known and cited as "the Immigration and  
26 Nationality Law Assistance Act."

27 **2. Definitions.** As used in this section, unless the context otherwise indicates, the  
28 following terms have the following meanings.

29 **A. "Compensation"** means money, property, the reciprocal exchange of services or  
30 anything else of value.

31 **B. "Federally authorized immigration representative"** means an attorney who is  
32 admitted to and in good standing before the bar of a state of the United States other  
33 than Maine, or other person who is authorized to represent another in immigration  
34 and nationality law matters to the extent allowed under federal law or regulations.

1 including 8 Code of Federal Regulations, Section 292.1 and 1292.1 (1996), with such  
2 representation specifically limited to federal immigration and nationality law matters.

3 C. "Immigration and nationality law assistance" means assistance on an immigration  
4 and nationality law matter.

5 D. "Immigration form" means a form created by the United States Department of  
6 Homeland Security, the United States Department of Justice, the United States  
7 Department of Labor, the United States Department of State or other federal agency  
8 charged with implementing federal immigration and nationality laws for use in an  
9 immigration and nationality law matter.

10 E. "Immigration and nationality law matter" means any application, proceeding,  
11 filing or other action before an agency of the United States Department of Homeland  
12 Security, the United States Department of Justice, the United States Department of  
13 Labor or the United States Department of State or other federal agency charged with  
14 implementing federal immigration and nationality laws regarding the nonimmigrant,  
15 immigrant or citizenship status of or the admission to or removal from the United  
16 States of a person that arises from the application of a federal immigration and  
17 nationality law, executive order or presidential proclamation.

18 F. "Nonlegal immigration and nationality law assistance" is limited to:

19 (1) Translating from English into a customer's primary language questions on an  
20 immigration form selected by the customer so that the customer can understand  
21 the questions and does not include advising the customer as to the  
22 appropriateness of the immigration form selected by the customer or suggesting  
23 which immigration form to use;

24 (2) Translating from a customer's primary language into English and otherwise  
25 transcribing to an immigration form the customer's answers to questions on that  
26 form and does not include advising the customer as to the appropriateness of the  
27 immigration form selected by the customer or suggesting which immigration  
28 form to use or as to the customer's answers on that immigration form;

29 (3) Securing or assisting the customer to secure supporting documents currently  
30 in existence, such as birth and marriage certificates, that may be needed for  
31 submission with immigration forms and does not include drafting of affidavits or  
32 other documents that may need to accompany immigration forms; and

33 (4) Making referrals for legal representation with respect to an immigration and  
34 nationality law matter to an attorney admitted to and in good standing before the  
35 bar of the State or to a federally authorized immigration representative duly  
36 authorized by federal law and regulations to undertake such representation.

37 3. Nonlegal immigration and nationality law assistance authorized. A person  
38 offering immigration and nationality law assistance may offer or provide only nonlegal  
39 immigration and nationality law assistance, except, however, that an attorney admitted to  
40 and in good standing before the bar of the State or a federally authorized immigration  
41 representative may provide immigration and nationality law assistance in the form of  
42 representation to the extent authorized by federal laws and regulations in immigration  
43 proceedings before agencies of the United States Department of Homeland Security, the

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COMMITTEE AMENDMENT <sup>A</sup> to H.P. 1398, L.D. 1996

1 United States Department of Justice, the United States Department of Labor or the United  
2 States Department of State or other federal agency charged with carrying out the  
3 implementation of federal immigration and nationality laws.

4 Nothing in this section is intended to nor does it authorize either an attorney who is not  
5 admitted to and in good standing before the bar of the State or a federally authorized  
6 immigration representative to offer legal opinions or general legal advice regarding state  
7 laws or to represent another before any state court, administrative agency or other forum  
8 charged with interpreting or implementing state laws.

9 **4. Prohibited activities.** In the course of dealing with customers or prospective  
10 customers, a provider of immigration and nationality law assistance may not:

11 A. Make a statement that the provider of immigration and nationality law assistance  
12 can or will obtain special favors from or has special influence with an agency or a  
13 tribunal of the United States Government or of any state government;

14 B. Retain compensation for services not performed;

15 C. Refuse to return documents supplied by, prepared by, paid for by or obtained on  
16 behalf of the customer and requested by the customer, regardless of whether there is  
17 outstanding compensation owed to the provider of immigration and nationality law  
18 assistance by the customer or a fee dispute between the provider of immigration and  
19 nationality law assistance and the customer;

20 D. Fail to complete and sign, in the space provided, an immigration form that  
21 requests the preparer's name, address, telephone number or signature, even if the  
22 provider of immigration and nationality law assistance has only provided nonlegal  
23 immigration and nationality law assistance in the preparation of the immigration  
24 form;

25 E. Provide legal advice regarding immigration and nationality law matters, including  
26 selecting immigration forms for a customer or advising a customer as to the  
27 appropriateness of the forms the customer has selected or as to the customer's  
28 answers to the questions on the forms, unless the provider of immigration and  
29 nationality law assistance is an attorney admitted to and in good standing before the  
30 bar of the State or is a federally authorized immigration representative; or

31 F. Represent or advertise or provide notice in any way or manner, including, but not  
32 limited to, the assertion of a title or credential such as "notario," "immigration  
33 consultant," "immigration agent," "immigration assistant" or "attorney," that could  
34 cause a customer to believe that the provider of immigration and nationality law  
35 assistance is authorized to practice law in the State or possesses special skill or  
36 expertise in immigration and nationality law matters unless the provider is an  
37 attorney admitted to and in good standing before the bar of the State or is a federally  
38 authorized immigration representative. A federally authorized immigration  
39 representative whose principal place of business is in the State shall give verbal  
40 notice to customers that the federally authorized immigration representative is not an  
41 attorney admitted to the bar of the State and may not give general legal advice or  
42 representation under state law and shall also include language in any written  
43 advertisement, notice or contract for services that clearly conveys that the federally

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COMMITTEE AMENDMENT "A" to H.P. 1398, L.D. 1996

1 authorized immigration representative is not an attorney admitted to practice law in  
2 the State and may not give general legal advice or assistance under state law.

3 **5. Unfair method of competition or unfair and deceptive act or practice.** A  
4 violation of this section substantially affects the public interest and constitutes an unfair  
5 method of competition and a deceptive act or practice in the conduct of trade or  
6 commerce for purposes of the Maine Unfair Trade Practices Act.

7 **6. Civil violation.** A violation of this section constitutes a civil violation for which a  
8 fine of not more than \$5,000 may be adjudged.

9 **7. Civil Action.** In addition to any other remedy that may be available, a customer  
10 who is aggrieved by a violation of this section may initiate a civil action in the Superior  
11 Court against the violator for injunctive relief or damages or both. If the court finds a  
12 violation of this section, the court may award to the customer:

13 A. An amount equal to actual damages sustained by the customer as a result of the  
14 violation;

15 B. An amount equal to 3 times the actual damages; and

16 C. The costs of the action together with reasonable attorney's fees as determined by  
17 the court.

18 **8. Attorney General action; report.** Whenever the Attorney General has reason to  
19 believe that a person within the State has engaged in or is engaging in activities that  
20 violate this section, the Attorney General may initiate an action in the Superior Court to  
21 enforce this section. The Attorney General, by January 1, 2007, and every January 1st  
22 thereafter, shall submit a report to the joint standing committee of the Legislature having  
23 jurisdiction over judiciary matters on the number and circumstances of all investigations  
24 that the Department of the Attorney General has initiated in the preceding year relating to  
25 violations of this section.

26 **Sec. 2. 4 MRSA §955-C, sub-§1, ¶C,** as enacted by PL 1997, c. 712, §2, is  
27 amended to read:

28 C. The notary public is in violation of section 954-A or section 960; or

29 **Sec. 3. 4 MRSA §960** is enacted to read:

30 **§960. Advertisement of services**

31 **1. Advertisement defined.** For purposes of this section, "advertisement" means  
32 material designed to promote a product or service offered by a person that is engaged in  
33 offering such products or services for profit. "Advertisement" includes business cards,  
34 brochures and notices.

35 **2. Notice; requirements.** A notary public who is not an attorney admitted to and in  
36 good standing before the bar of the State and who advertises notary services in a language  
37 other than English must include in the advertisement a notice that includes:

38 A. Information on the fees that the notary may charge; and

39 B. The following statement:

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1 "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN  
2 MAINE AND MAY NOT GIVE LEGAL ADVICE ABOUT  
3 IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT  
4 FEES FOR LEGAL ADVICE."

5 The notice must be in both English and in the language of the advertisement and in letters  
6 of a conspicuous size. If the advertisement is by radio, television or any other audio  
7 medium, the statement may be modified, but must include substantially the same  
8 message.

9 3. Prohibition. An advertisement for notary services may not include a literal  
10 translation of the phrase "Notary Public" into any language other than English if the  
11 literal translation implies that the notary public is an attorney licensed to practice in the  
12 State or in any jurisdiction of the United States. For purposes of this subsection, "literal  
13 translation" means the translation of a word or phrase without regard to the true meaning  
14 of the word or phrase in the language that is being translated.

15 4. Civil violation. Any violation of this section constitutes a civil violation for  
16 which a fine of not more than \$5,000 may be adjudged.

17 5. Civil action. In addition to any other remedy that may be available, a customer  
18 who is aggrieved by a violation of this section may initiate a civil action in the Superior  
19 Court against the violator for injunctive relief or damages or both. If a court finds a  
20 violation of this section, the court may award to the customer:

21 A. An amount equal to actual damages sustained by the customer as a result of the  
22 violation;

23 B. An amount equal to 3 times the actual damages; and

24 C. The costs of the action together with reasonable attorney's fees as determined by  
25 the court.

26 6. Attorney General action. Whenever the Attorney General has reason to believe  
27 that a person in the State has engaged in or is engaging in activities that violate this  
28 section, the Attorney General may initiate an action in the Superior Court to enforce this  
29 section.

30 Emergency clause. In view of the emergency cited in the preamble, this Act takes  
31 effect when approved.'

32 **SUMMARY**

33 The amendment strikes language from the bill creating a new statutory section  
34 prohibiting the unauthorized practice of immigration or nationality law and replaces it  
35 with a new statutory section that authorizes nonlegal immigration and nationality law  
36 assistance in some instances. The amendment defines "federally authorized immigration  
37 representative" and "nonlegal immigration and nationality law assistance" as well as  
38 other terms. It prohibits certain activities of a provider of immigration and nationality  
39 law assistance. The amendment retains language in the bill that creates a civil violation  
40 and provides for civil penalties and remedies. The amendment also retains language from  
41 the bill that places restrictions on notaries, including notice and advertising requirements.  
42 It strikes language from the bill creating a new statutory section defining "immigration

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1 consultant" with authorizations to provide services. The amendment also requires the  
2 Attorney General to submit to the joint standing committee of the Legislature having  
3 jurisdiction over judiciary matters an annual report on investigations initiated relating to  
4 the unauthorized practice of immigration and nationality law. Finally, the amendment  
5 adds an emergency preamble and an emergency clause, which make the legislation take  
6 effect when approved.

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**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**



# 122nd MAINE LEGISLATURE

LD 1996

LR 3037(02)

**An Act To Prevent Unauthorized Practice of Immigration and Nationality Law**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund  
Minor revenue increase - General Fund

### Correctional and Judicial Impact Statements

May increase the number of civil suits filed in the court system.  
Establishes new civil violations of the Maine Unfair Trade Practices Act.  
The collection of additional fines may increase General Fund revenue by minor amounts.

### Fiscal Detail and Notes

Any additional costs associated with implementing this legislation can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.