

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1996

H.P. 1398

House of Representatives, February 7, 2006

An Act To Prevent Unauthorized Practice of Immigration and Nationality Law

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CUMMINGS of Portland.
Cosponsored by Representative: TARDY of Newport.

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

2 **Sec. 1. 4 MRSA §807, sub-§3, ¶A**, as enacted by PL 1989, c. 265, §1 and
3 repealed and replaced by c. 755, is amended to read:

4 A. Practice before any Federal Court by any person admitted to practice therein or
5 before any federal administrative agency or tribunal as permitted by federal statutes
6 or regulations;

7 **Sec. 2. 4 MRSA §807-B** is enacted to read:

8 **§807-B. Unauthorized practice of immigration or nationality law**

9 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
10 following terms have the following meanings.

11 A. "Immigration or nationality services" includes all services implicating any law,
12 action, filing or proceeding related to a person's immigration or citizenship status in
13 the United States, including the selection of or completion of any forms relating to
14 immigration status or benefits under the United States Immigration and Nationality
15 Act, 8 United States Code, Section 1101 et seq.

16 B. "Original document" means any document of the United States Government or
17 any department or agency thereof, any foreign government or any state government
18 or political subdivision thereof or any other document, including signed affidavits,
19 that would demonstrate the physical presence of a person in the United States or any
20 other affidavits relating to an immigration or nationality matter.

21 C. "Unauthorized practice of immigration or nationality law" means giving legal
22 advice, including selecting types of immigration forms for use, on any matter
23 concerning immigration or nationality services without authorization under this
24 section.

25 **2. Authorized representation.** A person desiring immigration and nationality
26 services may only be represented by a person authorized under 8 Code of Federal
27 Regulations, Section 292.1 or 1292.1 (2006) or any other federal law or regulation
28 governing immigration or nationality matters.

29 **3. Prohibition; penalty.** A person may not in any case concerning immigration or
30 nationality services:

31 A. Represent another, select or prepare applications or forms or give any legal
32 advice, or render for compensation any service constituting the unauthorized practice
33 of immigration or nationality law. Violation of this paragraph is a Class D crime;

34 B. Misrepresent the services that the person may provide in a matter concerning
35 immigration or nationality services. Violation of this paragraph is a Class D crime; or

36 C. Retain original documents of a person desiring immigration and nationality
37 services unless authorized in writing by the person desiring immigration and
38 nationality services. Violation of this paragraph is a Class E crime.

39 **Sec. 3. 4 MRSA §955-C, sub-§1, ¶C**, as enacted by PL 1997, c. 712, §2, is
40 amended to read:

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

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

3 **§960. Advertisement of services**

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

8 **2. Notice; requirements.** A notary public who is not an attorney and who advertises
9 notary services in any language other than English must include in the advertisement a
10 notice that includes:

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

12 B. The following statement:

13 "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN
14 MAINE AND MAY NOT GIVE LEGAL ADVICE ABOUT
15 IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT
16 FEES FOR LEGAL ADVICE."

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

21 **3. Prohibition.** An advertisement for notary services may not include a literal
22 translation of the phrase "Notary Public" into any language other than English if the
23 literal translation implies that the notary public is a licensed attorney. For purposes of
24 this subsection, "literal translation" means the translation of a word or phrase without
25 regard to the true meaning of the word or phrase in the language that is being translated.

26 **Sec. 5. 10 MRSA c. 218** is enacted to read:

27 **CHAPTER 218**

28 **IMMIGRATION CONSULTANTS**

29 **§1479. Definitions**

30 As used in this chapter, unless the context otherwise indicates, the following terms
31 have the following meanings.

32 **1. Compensation.** "Compensation" means money, property or anything else of
33 value.

34 **2. Immigration consultant.** "Immigration consultant" means a person who is not
35 an attorney, accredited representative or other authorized individual under 8 Code of
36 Federal Regulations, Section 292.1 or 1292.1 (2006) and who is engaged in the business
37 of assisting consumers with immigration or nationality matters.

38 **3. Immigration or nationality matter.** "Immigration or nationality matter" means
39 any proceeding, filing or action affecting the immigration or citizenship status of any

1 person that arises under immigration and nationality law, executive order or presidential
2 proclamation or action of any federal department, bureau or agency charged with
3 implementing federal immigration and nationality laws.

4 **4. Nonlegal assistance or advice in immigration or nationality matter.**

5 “Nonlegal assistance or advice in immigration or nationality matter” includes:

6 A. In connection with an immigration or nationality matter, completing a form
7 provided by a federal or state agency but not selecting the form for a person or
8 advising a person as to which form to use or as to the person's answers on that form;

9 B. In connection with an immigration or nationality matter, translating a person's
10 answers to questions posed in a form provided by a federal or state agency;

11 C. Securing for a person supporting documents, such as birth certificates, that may
12 be necessary to complete a form provided by a federal or state agency;

13 D. Submitting a completed form provided by a federal or state agency on a person's
14 behalf and at the person's request to any federal department, bureau or agency
15 charged with implementing federal immigration and nationality laws; and

16 E. Making referrals to persons who could undertake legal representation activities for
17 a person in an immigration or nationality matter.

18 **§1480. Immigration consultant**

19 **1. Authorized services.** A person engaged in the business or acting in the capacity
20 of an immigration consultant may offer only nonlegal assistance or advice in an
21 immigration or nationality matter.

22 **2. Prohibition.** Unless authorized by federal law or federal regulations, including 8
23 Code of Federal Regulations, Section 292.1 or 1292.1 (2006), to represent persons before
24 any federal department, bureau or agency charged with implementing federal
25 immigration and nationality laws, a person may not, for compensation, engage in the
26 business or act in the capacity of an immigration consultant within the State except as
27 provided by this chapter.

28 **§1480-A. Violation; penalty**

29 **1. Violations; Maine Unfair Trade Practices Act.** A violation of this chapter
30 constitutes a violation of the Maine Unfair Trade Practices Act.

31 **2. Civil violation.** A person who violates this chapter commits a civil violation for
32 which a fine of not more than \$5,000 must be adjudged.

33 **3. Liability.** In addition to any other remedy, a consumer who is aggrieved by a
34 violation of this chapter by an immigration consultant may bring a civil action for
35 injunctive relief or damages, or both. If the court finds that the defendant has violated a
36 provision of this chapter, the court may award to the consumer:

37 A. An amount equal to any actual damages sustained by the consumer as a result of
38 the violation;

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

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

1 **4. Attorney General action.** Whenever the Attorney General has reason to believe
2 that any person within this State has engaged in or is engaging in activities that violate
3 this chapter, the Attorney General may initiate an action in Superior Court to enforce this
4 chapter.

5

SUMMARY

6 This bill accomplishes the following.

7 1. It prohibits the unlawful practice of immigration and nationality law and specifies
8 who may represent a person desiring immigration and nationality services, bringing the
9 state law regarding authorized representatives in line with federal law.

10 2. It requires that a notary public who is not an attorney and who advertises notary
11 services in any language other than English include in the advertisement a notice that the
12 notary public is not an attorney and prohibits the advertisement from containing a literal
13 translation of the phrase "notary public" if such a translation would imply that the notary
14 is a licensed attorney.

15 3. It specifies that a person who is not an attorney and who is engaged in the business
16 or acting in the capacity of an immigration consultant may offer only nonlegal assistance
17 or advice in an immigration or nationality matter.