

Assembly Bill No. 2691

CHAPTER 557

An act to amend Sections 22440, 22441, 22442, 22442.2, 22443.1, and 22444 of, and to repeal Section 22442.4 of, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 16, 2004. Filed with Secretary of State September 16, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2691, Correa. Immigration consultants.

Existing law regulates the practice of immigration consultants, defined as persons who provide nonlegal assistance or advice in an immigration matter. A violation of the provisions regulating immigration consultants is a crime. Existing law requires a person to file a \$50,000 bond with the Secretary of State prior to engaging in the business or acting in the capacity of an immigration consultant.

This bill would require a person who is required to file a bond to file a disclosure form that contains certain information with the Secretary of State, and would also require an immigration consultant to submit a copy of valid and current photo identification.

The bill would require the Secretary of State to post specified information relating to immigration consultant bond compliance on its Web site.

Existing law prohibits an immigration consultant from making certain statements to a client, either orally or in a written contract, including a statement that the immigration consultant can or will obtain special favors or has special influence with the United States Immigration and Naturalization Service.

This bill would change this provision to reflect the change in name of that agency to the United States Citizenship and Immigration Services. The bill would expand this prohibition to make it unlawful for an immigration consultant to make a statement that he or she can or will obtain special favors from, or that he or she has special influence with, any governmental agency, employee, or official that may have a bearing on a client's immigration matter. The bill would make related changes.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 22440 of the Business and Professions Code is amended to read:

22440. It is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter.

SEC. 2. Section 22441 of the Business and Professions Code is amended to read:

22441. (a) A person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter. That assistance or advice includes, but is not limited to, the following:

(1) Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms.

(2) Translating a person's answers to questions posed in those forms.

(3) Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms.

(4) Submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.

(5) Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

(b) "Immigration matter" means any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor.

(c) "Compensation" means money, property, or anything else of value.

(d) Every person engaged in the business or acting in the capacity of an immigration consultant shall only offer nonlegal assistance or advice in an immigration matter as defined in subdivision (a). Any act in violation of subdivision (a) is a violation of this chapter.



SEC. 3. Section 22442 of the Business and Professions Code is amended to read:

22442. (a) Every person engaged in the business or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations.

(b) The written contract shall include all provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 10-point boldface type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.

(4) The written contract shall list the documents to be prepared by the immigration consultant, and shall explain the purpose and process of each document.

(5) The written contract shall state the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where each document will be filed and the approximate processing times according to current published agency guidelines.

(c) An immigration consultant may not include provisions in the written contract relating to the following:

(1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.

(2) Any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.

(d) The provisions of the written contract shall be stated both in English and in the client's native language.

(e) A written contract is void if it is not written pursuant to subdivision (d).

(f) The client shall have the right to rescind the contract within 72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the client's native language.

(g) An immigration consultant may not make the statements described in subdivision (c) orally to a client.



(h) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

SEC. 4. Section 22442.2 of the Business and Professions Code is amended to read:

22442.2. (a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the immigration consultant's clientele, that contains the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.

(2) A statement that the immigration consultant is not an attorney.

(3) The services that the immigration consultant provides and the current and total fee for each service.

(4) The name of each immigration consultant employed at each location.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure in the native language of the client that shall include the following information:

(1) The immigration consultant's name, address, and telephone number.

(2) The immigration consultant's agent for service of process.

(3) The legal name of the employee who consulted with the client, if different from the immigration consultant.

(4) Evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for services as an



immigration consultant a clear and conspicuous statement that the immigration consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(3) Notwithstanding paragraph (1), a person who is not an active member of the State Bar of California, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for immigration services a clear and conspicuous statement that he or she is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement.

SEC. 5. Section 22442.4 of the Business and Professions Code is repealed.

SEC. 6. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) (1) Prior to engaging in the business or acting in the capacity of an immigration consultant, each person shall file with the Secretary of State a bond of fifty thousand dollars (\$50,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars (\$50,000).

(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) An immigration consultant who is required to file a surety bond with the Secretary of State shall also file a disclosure form with the Secretary of State that contains all of the following information:



(1) The immigration consultant's name, date of birth, residence address, business address, residence telephone number, and business telephone number.

(2) The name and address of the immigration consultant's agent for service of process if one is required to be or has been appointed.

(3) Whether the immigration consultant has ever been convicted of a violation of this chapter or of Section 6126.

(4) If applicable, the name, business address, business telephone number, and agent for service of process of the corporation or partnership employing the immigration consultant.

(d) An immigration consultant shall notify the Secretary of State's office in writing within 30 days when the surety bond required by this section is renewed, and of any change of name, address, telephone number, or agent for service of process.

(e) The Secretary of State shall post information demonstrating that an immigration consultant is in compliance with the bond required by this section on its Web site. The Secretary of State shall ensure that the information is current and shall update the information at least every 30 days.

(f) The Secretary of State shall develop the disclosure form required to file a bond under this section and make it available to any immigration consultant filing a bond pursuant to this section.

(g) An immigration consultant shall submit with the disclosure form a copy of valid and current photo identification to determine the immigration consultant's identity, such as a California driver's license or identification card, passport, or other identification acceptable to the Secretary of State.

(h) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond.

(i) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds.

(j) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

SEC. 7. Section 22444 of the Business and Professions Code is amended to read:

22444. It is unlawful for any person engaged in the business or acting in the capacity of an immigration consultant to do any of the following acts:



(a) Make false or misleading statements to a client while providing services to that client.

(b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise.

(c) Make any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.

(d) Charge a client a fee for referral of the client to another for services which the immigration consultant cannot or will not provide to the client. A sign setting forth this prohibition shall be conspicuously displayed in the immigration consultant's office.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

