

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1159**

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**Introduced by Assembly Member Gonzalez**  
(Principal coauthor: Senator De León)

February 22, 2013

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An act to amend Sections 22442 and 22443.1 of, to add Sections 22442.15 and 22442.20 to, and to add Article 16 (commencing with Section 6240) to Chapter 4 of Division 3 of, the Business and Professions Code, relating to immigration ~~services~~; *services, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1159, as amended, Gonzalez. Immigration services.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation.

This bill would require attorneys providing immigration reform act services, as defined, to register with the State Bar, as specified. The bill would require these attorneys to provide a client with a written contract containing specified information, including an itemized list, with costs, of each service to be performed; to provide to the client a statement of accounting for the services rendered and payments made every 2 months; and to deliver to the client a copy of each document or form completed on behalf of the client. The bill would require these attorneys to comply with certain requirements relating to document retention and the return of original documents to clients and to file with the State Bar a bond

of \$100,000 in accordance with specified provisions. The bill would require these attorneys to deposit in a client trust account any funds received from the client prior to performing those services for that client, and would impose certain requirements relating to the expenditure of funds from this trust account. The bill would authorize the State Bar to charge these attorneys certain fees for the reasonable regulatory costs of administering and enforcing these provisions and would require the State Bar to adopt rules and regulations for purposes of implementing these provisions.

Existing law provides for the regulation of a person engaged in the business or acting in the capacity of an immigration consultant, and provides that a violation of these provisions is a crime. Existing law requires an immigration consultant to provide a client with a written contract containing specified information prior to providing services. Existing law requires an immigration consultant to file a bond of \$50,000 with the Secretary of State in accordance with specified provisions of law.

This bill would increase the amount of this bond to \$100,000. The bill would require that the written contract contain additional information relating to an explanation of the purpose of each service to be performed. The bill would require an immigration consultant to establish a client trust account and to deposit in this account any funds received from the client prior to performing immigration reform act services, as defined, for that client, and would impose certain requirements relating to the expenditure of funds from this trust account.

The bill would prohibit an attorney or an immigration consultant from demanding or accepting the advance payment of any funds from a person before the enactment of a specified federal act, and would require any funds received after January 1, 2014, but before the enactment of the federal act, to be refunded to the client.

Because a violation of these provisions by an immigration consultant would be a crime, this bill would impose a state-mandated local program.

This bill would provide that certain of its provisions would become operative only upon the enactment of a specified federal act relating to immigration reform.

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.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. Article 16 (commencing with Section 6240) is  
2 added to Chapter 4 of Division 3 of the Business and Professions  
3 Code, to read:

4

5 Article 16. Attorneys Providing Immigration Reform Act  
6 Services

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8 6240. (a) An attorney who provides immigration reform act  
9 services, and who meets the criteria described in subdivision (c),  
10 shall register with the State Bar as an attorney who provides  
11 immigration reform act services, and shall demonstrate compliance  
12 with this article, as may be required by the rules and regulations  
13 of the State Bar.

14 (b) For purposes of this article, the following definitions apply:

15 (1) "Immigration reform act" means the federal act known as  
16 the "Border Security, Economic Opportunity, and Immigration  
17 Modernization Act" (S. 744, 2013).

18 (2) "Immigration reform act services" means consultation or  
19 representation services related to immigration and citizenship  
20 status, benefits, or relief under the immigration reform act.

21 (c) Except as provided in subdivision (d), this article shall apply  
22 to the following:

23 (1) An attorney who is a member of the State Bar who provides  
24 immigration reform act services.

25 (2) An attorney who is not a member of the State Bar, but who  
26 meets both of the following:

27 (A) The attorney is authorized to practice law or authorized by  
28 federal law to represent persons before the Board of Immigration  
29 Appeals or the United States Citizenship and Immigration Services.

30 (B) The attorney is providing immigration reform act services  
31 in an office or business in California.

1 (d) This article does not apply to an attorney providing  
2 immigration reform act services who is either of the following:

3 (1) An employee of a qualified free legal service provider, that  
4 is on the current list maintained by the Office of the Chief  
5 Immigration Judge of the Executive Office for Immigration Review  
6 and that meets the qualifications under Section 1003.61 of Title 8  
7 of the Code of Federal Regulations.

8 (2) An employee of a nonprofit, tax-exempt corporation who  
9 helps clients complete application forms in immigration matters  
10 free of charge, or for a fee, including reasonable costs, consistent  
11 with that authorized by the Board of Immigration Appeals under  
12 Section 292.2 of Title 8 of the Code of Federal Regulations.

13 6241. (a) An attorney providing immigration reform act  
14 services shall, prior to providing these services, provide the client  
15 with a written contract in a form approved by the State Bar. The  
16 written contract shall include, but is not limited to, all of the  
17 following provisions:

18 (1) An itemized list specifying each service to be performed,  
19 with an explanation of the purpose and process of each service.

20 (2) The cost of each itemized service described in paragraph  
21 (1).

22 (3) An itemized list of the documents to be prepared by the  
23 attorney, with an explanation of the purpose and process of each  
24 document.

25 (4) The cost of preparation of each itemized document described  
26 in paragraph (3).

27 (5) A statement of the purpose for which the attorney has been  
28 hired and the actions to be taken by the attorney regarding each  
29 document described in paragraph (3), including the agency and  
30 office where each document will be filed and the approximate  
31 processing times according to applicable published agency  
32 guidelines.

33 (6) A statement informing the client that he or she may report  
34 complaints to the Office of Immigrant Assistance of the  
35 Department of Justice and to the State Bar of California. This  
36 statement shall include the toll-free telephone numbers and Internet  
37 Web sites of those entities.

38 (b) An attorney providing immigration reform act services shall  
39 not, in writing or orally, make either of the following statements:

40 (1) A guarantee or promise regarding the results of the services.

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

6 (c) The provisions of the written contract shall be stated in  
7 English and in the client's native language. A written contract is  
8 void if it is not written pursuant to this subdivision.

9 (d) The client shall have the right to rescind the contract within  
10 72 hours of signing the contract. The written contract shall  
11 conspicuously state this right in both English and the client's native  
12 language.

13 6242. A statement of accounting for the immigration reform  
14 act services rendered and payments made shall be provided to the  
15 client every two months, shall be typed or computer generated on  
16 the attorney's letterhead, and shall display the itemized charges  
17 and total charges for services and the client's payments offsetting  
18 those charges. The attorney shall provide the client a written  
19 translation of the statement in the client's native language, if  
20 applicable.

21 6243. An attorney providing immigration reform act services  
22 shall do all of the following:

23 (a) Deliver to the client a copy of each document or form  
24 completed on behalf of the client. Each document and form  
25 delivered shall include the name and address of the attorney who  
26 prepared the document or form.

27 (b) Retain copies of all documents and forms of a client for not  
28 less than three years from the date of the last service to the client.

29 (c) Return to a client all original documents that the client has  
30 provided to the attorney in support of the client's application,  
31 including, but not limited to, original birth certificates, rental  
32 agreements, utility bills, employment stubs, Department of Motor  
33 Vehicle licenses with dates of entry, and passports. An original  
34 document that does not need to be submitted to immigration  
35 authorities as an original document shall be returned by the attorney  
36 immediately after making a copy or reproduction thereof.

37 6244. (a) (1) Prior to providing immigration reform act  
38 services, an attorney shall file with the State Bar a bond of one  
39 hundred thousand dollars (\$100,000) executed by a corporate  
40 surety admitted to do business in this state and conditioned upon

1 compliance with this article. The total aggregate liability on the  
2 bond shall be limited to one hundred thousand dollars (\$100,000).

3 (2) The bond may be terminated pursuant to Section 995.440  
4 of, and Article 13 (commencing with Section 996.310) of Chapter  
5 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

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

13 (c) An attorney shall notify the State Bar’s office in writing  
14 within 30 days when the surety bond required by this section is  
15 renewed, and of any change of name, address, telephone number,  
16 or agent for service of process.

17 (d) The State Bar shall post information on its Internet Web site  
18 demonstrating that an attorney is registered to provide immigration  
19 reform act services and is in compliance with the requirements of  
20 this section. The State Bar shall update the information at least  
21 every 30 days. The State Bar shall remove this information if the  
22 attorney is out of compliance with the requirements of this section.

23 (e) The State Bar shall adopt rules and regulations specifying  
24 the process by which a person may make a claim to recover  
25 damages from the bond.

26 6245. (a) An attorney who provides immigration reform act  
27 services shall deposit in a client trust account any funds received  
28 from the client prior to performing those services for that client.

29 (b) The attorney providing the immigration reform act services  
30 for the client may withdraw funds received from that client only  
31 in compliance with either of the following:

32 (1) After completing one or more of the itemized services  
33 described in paragraph (1) of subdivision (a) of Section 6241, and  
34 only in the amount identified as the cost of that service or those  
35 services pursuant to paragraph (2) of subdivision (a) of Section  
36 6241.

37 (2) After completing one or more of the itemized documents  
38 described in paragraph (3) of subdivision (a) of Section 6241, and  
39 only in the amount identified as the cost of the preparation of that

1 document or those documents pursuant to paragraph (4) of  
2 subdivision (a) of Section 6241.

3 6246. (a) It is unlawful for an attorney to demand or accept  
4 the advance payment of any funds from a person for immigration  
5 reform act services before the enactment of the immigration reform  
6 act.

7 (b) Any funds received after January 1, 2014, but before the  
8 enactment of the immigration reform act, shall be refunded to the  
9 client.

10 (c) This section shall become operative on January 1, 2014.

11 6247. The State Bar may charge and collect registration,  
12 renewal, and filing fees from attorneys providing immigration  
13 reform act services for the reasonable regulatory costs of  
14 administering and enforcing this article.

15 6248. (a) The State Bar shall adopt rules and regulations for  
16 purposes of implementing and enforcing this article.

17 (b) Except as provided in Section 6246, this article shall become  
18 operative only upon the enactment of the immigration reform act.

19 SEC. 2. Section 22442 of the Business and Professions Code  
20 is amended to read:

21 22442. (a) Every person engaged in the business, or acting in  
22 the capacity of, an immigration consultant who enters into a  
23 contract or agreement with a client to provide services shall, prior  
24 to providing any services, provide the client with a written contract,  
25 the contents of which shall be prescribed by the Department of  
26 Consumer Affairs in regulations.

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

29 (1) The services to be performed. Each service to be performed  
30 shall be itemized with an explanation of the purpose and process  
31 of each service.

32 (2) The cost of each itemized service to be performed.

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

37 (4) The written contract shall list the documents to be prepared  
38 by the immigration consultant, shall explain the purpose and  
39 process of each document, and shall list the cost for preparing each  
40 document.

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

7 (6) The written contract shall include a provision that informs  
8 the client that he or she may report complaints relating to  
9 immigration consultants to the Office of Immigrant Assistance of  
10 the Department of Justice. The written contract shall also include  
11 a provision stating that complaints concerning the unauthorized  
12 practice of law may be reported to the State Bar of California.  
13 These required provisions shall include the toll-free telephone  
14 numbers and Internet Web sites of those entities.

15 (c) An immigration consultant shall not include provisions in  
16 the written contract relating to either of the following:

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

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

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

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

28 (f) The client shall have the right to rescind the contract within  
29 72 hours of signing the contract. The contents of this subdivision  
30 shall be conspicuously set forth in the written contract in both  
31 English and the client's native language.

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

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

1 SEC. 3. Section 22442.15 is added to the Business and  
2 Professions Code, to read:

3 22442.15. (a) An immigration consultant who provides  
4 immigration reform act services shall establish and deposit into a  
5 client trust account any funds received from a client prior to  
6 performing those services for that client.

7 (b) For purposes of this section, the following definitions apply:

8 (1) “Immigration reform act” means the federal act known as  
9 the “Border Security, Economic Opportunity, and Immigration  
10 Modernization Act” (~~S. 744~~, (S. 744, 2013).

11 (2) “Immigration reform act services” means consultation or  
12 representation services related to immigration and citizenship  
13 status, benefits, or relief under the immigration reform act.

14 (c) The immigration consultant providing immigration reform  
15 act services for the client may withdraw funds received from that  
16 client only in compliance with either of the following:

17 (1) After completing one or more of the itemized services  
18 described in paragraph (1) of subdivision (b) of Section 22442,  
19 and only in the amount identified as the cost of that service or  
20 those services pursuant to paragraph (2) of subdivision (b) of  
21 Section 22442.

22 (2) After completing one or more of the documents listed, and  
23 only in the amounts listed, pursuant to paragraph (4) of subdivision  
24 (b) of Section 22442.

25 (d) This section shall become operative only upon the enactment  
26 of the immigration reform act.

27 SEC. 4. Section 22442.20 is added to the Business and  
28 Professions Code, to read:

29 22442.20. (a) It is unlawful for an immigration consultant to  
30 demand or accept the advance payment of any funds from a person  
31 for immigration reform act services before the enactment of the  
32 immigration reform act, as defined in subdivision (b) of Section  
33 22442.15.

34 (b) Any funds received after January 1, 2014, but before the  
35 enactment of the immigration reform act, as defined in subdivision  
36 (b) of Section 22442.15, shall be refunded to the client.

37 SEC. 5. Section 22443.1 of the Business and Professions Code  
38 is amended to read:

39 22443.1. (a) (1) Prior to engaging in the business, or acting  
40 in the capacity, of an immigration consultant, each person shall

1 file with the Secretary of State a bond of one hundred thousand  
2 dollars (\$100,000) executed by a corporate surety admitted to do  
3 business in this state and conditioned upon compliance with this  
4 chapter. The total aggregate liability on the bond shall be limited  
5 to one hundred thousand dollars (\$100,000).

6 (2) The bond may be terminated pursuant to Section 995.440  
7 of, and Article 13 (commencing with Section 996.310) of Chapter  
8 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

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

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

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

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

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

27 (4) Whether the immigration consultant has ever been arrested  
28 or convicted of a crime.

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

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

36 (e) The Secretary of State shall post information on its Internet  
37 Web site demonstrating that an immigration consultant is in  
38 compliance with the bond required by this section and has  
39 satisfactorily passed the background check required under Section  
40 22441.1, and shall also post a copy of the immigration consultant's

1 photograph. The Secretary of State shall ensure that the information  
2 is current and shall update the information at least every 30 days.  
3 The Secretary of State shall only post this information and  
4 photograph on its Internet Web site if the person has filed and  
5 maintained the bond, filed the disclosure form and photograph  
6 required to be filed with the Secretary of State, and passed the  
7 background check required by Section 22441.1.

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

11 (g) An immigration consultant shall submit all of the following  
12 with the disclosure form:

13 (1) A copy of valid and current photo identification to determine  
14 the immigration consultant's identity, such as a California driver's  
15 license or identification card, passport, or other identification  
16 acceptable to the Secretary of State.

17 (2) A photograph of himself or herself with the dimensions and  
18 in the style that would be acceptable to the U.S. Department of  
19 State for obtaining a United States passport, as instructed by the  
20 Secretary of State. An immigration consultant bonded on or before  
21 December 31, 2006, shall submit the photograph on or before July  
22 1, 2007.

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

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

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

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

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

3 *SEC. 7. This act is an urgency statute necessary for the*  
4 *immediate preservation of the public peace, health, or safety within*  
5 *the meaning of Article IV of the Constitution and shall go into*  
6 *immediate effect. The facts constituting the necessity are:*

7 *In order to implement measures as quickly as possible and as*  
8 *necessary to prevent fraud on immigrants by attorneys and other*  
9 *persons by making promises of benefits and relief under pending*  
10 *and proposed federal immigration reform acts before their*  
11 *enactment, it is necessary that this act take effect immediately.*

O