

AMENDED IN SENATE AUGUST 15, 2013

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1159

Introduced by Assembly Member Gonzalez

(Principal coauthor: Senator De León)

(Coauthor: Assembly Member Alejo)

(Coauthor: Senator Hueso)

February 22, 2013

An act to amend Sections 22442 and 22443.1 and 22442.3 of, to add Sections ~~22442.15~~ 6126.7, 22442.5, and ~~22442.20~~ 22442.6 to, and to add Article 16 (commencing with Section 6240) to Chapter 4 of Division 3 of, *and to amend, repeal, and add Section 22443.1 of*, the Business and Professions Code, relating to immigration 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 providing immigration reform act services, as defined, 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: a description of the services that the attorney anticipates will be performed, the basis of compensation for these services, and a statement informing the client that he or she may report complaints regarding the attorney's services to specified entities.~~

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, *commencing 6 months following the effective date of this bill*, 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~~ *an immigration reform act, as defined*, and would require any funds received after ~~January 1, 2014~~ *the effective date of this bill*, but before the enactment of ~~the federal~~ *an immigration reform act*, to be refunded to the client.

The bill would require any funds that were received before the effective date of the bill for services not yet rendered to be either refunded to the client or deposited in a client trust fund in accordance with specified provisions. The bill would prescribe penalties, not to exceed \$1,000 per day for each violation, for immigration consultants who violate these provisions.

Existing law prohibits an immigration consultant from literally translating the phrase “notary public” into Spanish.

This bill would provide that a violation of these provisions constitutes a violation of specified provisions of law relating to the unauthorized practice of law. The bill also would prescribe penalties, not to exceed \$1,000 per day for each violation, for immigration consultants who violate these provisions. Additionally, the bill would make it a violation of specified provisions of law relating to the unauthorized practice of law for any person who is not an attorney to literally translate from English into another language the phrases “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other terms that imply that the person is an attorney.

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: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 *SECTION 1. Section 6126.7 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *6126.7. (a) It is a violation of subdivision (a) of Section 6126*
- 4 *for any person who is not an attorney to literally translate from*

1 *English into another language, in any document, including an*
 2 *advertisement, stationery, letterhead, business card, or other*
 3 *comparable written material, any words or titles, including, but*
 4 *not limited to, “notary public,” “notary,” “licensed,” “attorney,”*
 5 *or “lawyer,” imply that the person is an attorney. As provided in*
 6 *this subdivision, the literal translation of the phrase “notary*
 7 *public” into Spanish as “notario publico” or “notario,” is*
 8 *expressly prohibited.*

9 *(b) For purposes of this section, “literal translation” of a word*
 10 *or phrase from one language means the translation of a word or*
 11 *phrase without regard to the true meaning of the word or phrase*
 12 *in the language that is being translated.*

13 **SECTION 1.**

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

17
 18 **Article 16. Attorneys Providing Immigration Reform Act**
 19 **Services**
 20

21 ~~6240. (a) An attorney who provides immigration reform act~~
 22 ~~services, and who meets the criteria described in subdivision (c),~~
 23 ~~shall register with the State Bar as an attorney who provides~~
 24 ~~immigration reform act services, and shall demonstrate compliance~~
 25 ~~with this article, as may be required by the rules and regulations~~
 26 ~~of the State Bar.~~

27 ~~(b)~~

28 6240. For purposes of this article, the following definitions
 29 apply:

30 ~~(1)~~

31 (a) “Immigration reform act” means *any pending or future act*
 32 *of Congress that is enacted after the effective date of this section*
 33 *but before January 1, 2017, including, but not limited to, the federal*
 34 *act known as the “Border Security, Economic Opportunity, and*
 35 *Immigration Modernization Act” (S. 744, 2013). (S. 744, 2013),*
 36 *that authorizes an undocumented immigrant who either entered*
 37 *the United States without inspection or who did not depart after*
 38 *the expiration of a nonimmigrant visa, to attain a lawful status*
 39 *under federal law.*

40 ~~(2)~~

1 (b) “Immigration reform act services” means ~~consultation or~~
2 ~~representation services related to immigration and citizenship~~
3 ~~status, benefits, or relief under the services necessary in the~~
4 ~~preparation of an application and other related initial processes~~
5 ~~in order for an undocumented immigrant who either entered the~~
6 ~~United States without inspection or who did not depart after the~~
7 ~~expiration of a nonimmigrant visa, to attain a lawful status under~~
8 ~~an immigration reform act.~~

9 (e) ~~Except as provided in subdivision (d), this article shall apply~~
10 ~~to the following:~~

11 (1) ~~An attorney who is a member of the State Bar who provides~~
12 ~~immigration reform act services.~~

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

15 (A) ~~The attorney is authorized to practice law or authorized by~~
16 ~~federal law to represent persons before the Board of Immigration~~
17 ~~Appeals or the United States Citizenship and Immigration Services.~~

18 (B) ~~The attorney is providing immigration reform act services~~
19 ~~in an office or business in California.~~

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

22 (1) ~~An employee of a qualified free legal service provider, that~~
23 ~~is on the current list maintained by the Office of the Chief~~
24 ~~Immigration Judge of the Executive Office for Immigration Review~~
25 ~~and that meets the qualifications under Section 1003.61 of Title 8~~
26 ~~of the Code of Federal Regulations.~~

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

32 6241. (a) ~~An attorney providing immigration reform act~~
33 ~~services shall, prior to providing these services, provide the client~~
34 ~~with a written contract in a form approved by the State Bar. The~~
35 ~~written contract shall include, but is not limited to, all of the~~
36 ~~following provisions:~~

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

39 (2) ~~The cost of each itemized service described in paragraph~~
40 ~~(1).~~

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

4 ~~(4) The cost of preparation of each itemized document described~~
5 ~~in paragraph (3).~~

6 ~~(5) A statement of the purpose for which the attorney has been~~
7 ~~hired and the actions to be taken by the attorney regarding each~~
8 ~~document described in paragraph (3), including the agency and~~
9 ~~office where each document will be filed and the approximate~~
10 ~~processing times according to applicable published agency~~
11 ~~guidelines.~~

12 ~~(6) A statement informing the client that he or she may report~~
13 ~~complaints to the Office of Immigrant Assistance of the~~
14 ~~Department of Justice and to the State Bar of California. This~~
15 ~~statement shall include the toll-free telephone numbers and Internet~~
16 ~~Web sites of those entities.~~

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

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

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

25 ~~(e) The provisions of the written contract shall be stated in~~
26 ~~English and in the client's native language. A written contract is~~
27 ~~void if it is not written pursuant to this subdivision.~~

28 ~~(d) The client shall have the right to rescind the contract within~~
29 ~~72 hours of signing the contract. The written contract shall~~
30 ~~conspicuously state this right in both English and the client's native~~
31 ~~language.~~

32 ~~6242. A statement of accounting for the immigration reform~~
33 ~~act services rendered and payments made shall be provided to the~~
34 ~~client every two months, shall be typed or computer generated on~~
35 ~~the attorney's letterhead, and shall display the itemized charges~~
36 ~~and total charges for services and the client's payments offsetting~~
37 ~~those charges. The attorney shall provide the client a written~~
38 ~~translation of the statement in the client's native language, if~~
39 ~~applicable.~~

1 ~~6243. An attorney providing immigration reform act services~~
2 ~~shall do all of the following:~~

3 ~~(a) Deliver to the client a copy of each document or form~~
4 ~~completed on behalf of the client. Each document and form~~
5 ~~delivered shall include the name and address of the attorney who~~
6 ~~prepared the document or form.~~

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

9 ~~(c) Return to a client all original documents that the client has~~
10 ~~provided to the attorney in support of the client's application,~~
11 ~~including, but not limited to, original birth certificates, rental~~
12 ~~agreements, utility bills, employment stubs, Department of Motor~~
13 ~~Vehicle licenses with dates of entry, and passports. An original~~
14 ~~document that does not need to be submitted to immigration~~
15 ~~authorities as an original document shall be returned by the attorney~~
16 ~~immediately after making a copy or reproduction thereof.~~

17 ~~6244. (a) (1) Prior to providing immigration reform act~~
18 ~~services, an attorney shall file with the State Bar a bond of one~~
19 ~~hundred thousand dollars (\$100,000) executed by a corporate~~
20 ~~surety admitted to do business in this state and conditioned upon~~
21 ~~compliance with this article. The total aggregate liability on the~~
22 ~~bond shall be limited to one hundred thousand dollars (\$100,000).~~

23 ~~(2) The bond may be terminated pursuant to Section 995.440~~
24 ~~of, and Article 13 (commencing with Section 996.310) of Chapter~~
25 ~~2 of Title 14 of Part 2 of, the Code of Civil Procedure.~~

26 ~~(b) The bond required by this section shall be in favor of, and~~
27 ~~payable to, the State Bar of California and shall be for the benefit~~
28 ~~of any person damaged by any fraud, misstatement,~~
29 ~~misrepresentation, unlawful act or omission, or failure to provide~~
30 ~~the immigration reform act services of the attorney or the agents,~~
31 ~~representatives, or employees of the attorney, while acting within~~
32 ~~the scope of that employment or agency.~~

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

37 ~~(d) The State Bar shall post information on its Internet Web site~~
38 ~~demonstrating that an attorney is registered to provide immigration~~
39 ~~reform act services and is in compliance with the requirements of~~
40 ~~this section. The State Bar shall update the information at least~~

1 every 30 days. The State Bar shall remove this information if the
2 attorney is out of compliance with the requirements of this section.

3 ~~(e) The State Bar shall adopt rules and regulations specifying~~
4 ~~the process by which a person may make a claim to recover~~
5 ~~damages from the bond.~~

6 ~~6245. (a) An attorney who provides immigration reform act~~
7 ~~services shall deposit in a client trust account any funds received~~
8 ~~from the client prior to performing those services for that client.~~

9 ~~(b) The attorney providing the immigration reform act services~~
10 ~~for the client may withdraw funds received from that client only~~
11 ~~in compliance with either of the following:~~

12 ~~(1) After completing one or more of the itemized services~~
13 ~~described in paragraph (1) of subdivision (a) of Section 6241, and~~
14 ~~only in the amount identified as the cost of that service or those~~
15 ~~services pursuant to paragraph (2) of subdivision (a) of Section~~
16 ~~6241.~~

17 ~~(2) After completing one or more of the itemized documents~~
18 ~~described in paragraph (3) of subdivision (a) of Section 6241, and~~
19 ~~only in the amount identified as the cost of the preparation of that~~
20 ~~document or those documents pursuant to paragraph (4) of~~
21 ~~subdivision (a) of Section 6241.~~

22 *6241. This article shall apply to the following:*

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

25 *(b) An attorney who is not an active member of the State Bar,*
26 *but who meets both of the following:*

27 *(1) 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 *(2) The attorney is providing immigration reform act services*
31 *in an office or business in California.*

32 ~~6246.~~

33 ~~6242. (a) It is unlawful for an attorney to demand or accept~~
34 ~~the advance payment of any funds from a person for immigration~~
35 ~~reform act services before the enactment of the an immigration~~
36 ~~reform act.~~

37 ~~(b) Any funds received after January 1, 2014 the effective date~~
38 ~~of this section, but before the enactment of the an immigration~~
39 ~~reform act, shall be refunded to the client.~~

40 ~~(e) This section shall become operative on January 1, 2014.~~

1 (c) (1) *If an attorney providing immigration reform act services*
2 *accepted funds prior to the effective date of this section, and the*
3 *services provided in connection with payment of those funds were*
4 *rendered, the attorney shall provide the client with a statement of*
5 *accounting describing the services rendered.*

6 (2) (A) *Any funds received before the effective date of this*
7 *section and before the enactment of an immigration reform act,*
8 *for which immigration reform act services have not yet been*
9 *rendered, shall either be refunded to the client or shall be deposited*
10 *in a client trust account.*

11 (B) *If an attorney deposits funds in a client trust account*
12 *pursuant to this paragraph, he or she shall provide to the client a*
13 *written notice, in both English and the client's native language,*
14 *that there are no benefits or relief that are available, and that no*
15 *application for such benefits or relief may be processed until*
16 *enactment of an immigration reform act and the related necessary*
17 *federal regulations and forms.*

18 ~~6247. The State Bar may charge and collect registration,~~
19 ~~renewal, and filing fees from attorneys providing immigration~~
20 ~~reform act services for the reasonable regulatory costs of~~
21 ~~administering and enforcing this article.~~

22 ~~6248. (a) The State Bar shall adopt rules and regulations for~~
23 ~~purposes of implementing and enforcing this article.~~

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

26 6243. (a) *An attorney providing immigration reform act*
27 *services shall, prior to providing those services, provide the client*
28 *with a written contract. The written contract shall include, but*
29 *need not be limited to, all of the following:*

30 (1) *A description explaining the services that the attorney*
31 *anticipates will be performed.*

32 (2) *The basis of compensation for the services, including, but*
33 *not limited to, hourly rates, statutory fees, flat fees, and other*
34 *standard rates, fees, and charges applicable to the services.*

35 (3) *A statement informing the client that he or she may report*
36 *complaints to the Office of Immigrant Assistance of the Department*
37 *of Justice, to the State Bar of California, or to the bar of the court*
38 *of any state, possession, territory, or commonwealth of the United*
39 *States or of the District of Columbia where the attorney is admitted*

1 to practice law. This statement shall include the toll-free telephone
 2 numbers and Internet Web sites of those entities.

3 (b) (1) Except as specified in paragraphs (2) and (3), the
 4 provisions of the written contract shall be stated in both English
 5 and the client’s native language.

6 (2) Upon the consent of the client, the contract need not be
 7 written in English, and may instead be written in the client’s native
 8 language or another language that the client understands.

9 (3) For unwritten languages and languages that, in a reasonable
 10 person’s estimation, are extremely rare or uncommon, the
 11 provisions of the contract shall be written in English and shall be
 12 orally translated to the client in a language the client can
 13 understand. If a contract is orally translated pursuant to this
 14 paragraph, the written contract shall include a verification that
 15 the provisions of the contract have been orally translated, that the
 16 translator is competent to make the translation, and that the
 17 translation is true and accurate to the best of the translator’s
 18 abilities.

19 (4) A written contract is void if it does not comply with this
 20 subdivision.

21 (c) The State Bar may provide forms for contracts for use under
 22 this section.

23 (d) This section shall become operative only upon the enactment
 24 of an immigration reform act, as defined in paragraph (1) of
 25 subdivision (a) of Section 6240.

26 ~~SEC. 2:~~

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

29 22442. (a) Every person engaged in the business, or acting in
 30 the capacity of, an immigration consultant who enters into a
 31 contract or agreement with a client to provide services shall, prior
 32 to providing any services, provide the client with a written contract,
 33 the contents of which shall be prescribed by the Department of
 34 Consumer Affairs in regulations.

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

37 (1) The services to be performed. Each service to be performed
 38 shall be itemized with an explanation of the purpose and process
 39 of each service.

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

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

5 (4) The written contract shall list the documents to be prepared
6 by the immigration consultant, shall explain the purpose and
7 process of each document, and shall list the cost for preparing each
8 document.

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

15 (6) The written contract shall include a provision that informs
16 the client that he or she may report complaints relating to
17 immigration consultants to the Office of Immigrant Assistance of
18 the Department of Justice. The written contract shall also include
19 a provision stating that complaints concerning the unauthorized
20 practice of law may be reported to the State Bar of California.
21 These required provisions shall include the toll-free telephone
22 numbers and Internet Web sites of those entities.

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

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

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

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

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

36 (f) The client shall have the right to rescind the contract within
37 72 hours of signing the contract. The contents of this subdivision
38 shall be conspicuously set forth in the written contract in both
39 English and the client's native language.

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

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

9 *SEC. 4. Section 22442.3 of the Business and Professions Code*
10 *is amended to read:*

11 22442.3. (a) An immigration consultant shall not, with the
12 intent to mislead, literally translate, from English into another
13 language, ~~the~~ any words or titles, including, but not limited to,
14 “notary public,” “notary,” “licensed,” “attorney,” or “lawyer,” ~~or~~
15 ~~any other terms~~ that imply that the person is an attorney, in any
16 document, including an advertisement, stationery, letterhead,
17 business card, or other comparable written material describing the
18 immigration consultant.

19 (b) For purposes of this section, “literal translation” of a word
20 or phrase from one language means the translation of a word or
21 phrase without regard to the true meaning of the word or phrase
22 in the language that is being translated.

23 (c) An immigration consultant may not make or authorize the
24 making of any verbal or written references to his or her compliance
25 with the bonding requirements of Section 22443.1 except as
26 provided in this chapter.

27 (d) *A violation of subdivision (a) or (c) by an immigration*
28 *consultant shall constitute a violation of subdivision (a) of Section*
29 *6126.*

30 (e) (1) *In addition to the remedies and penalties prescribed in*
31 *this chapter, a person who violates this section shall be subject to*
32 *a civil penalty not to exceed one thousand dollars (\$1,000) per*
33 *day for each violation, to be assessed and collected in a civil action*
34 *brought by any person injured by the violation or in a civil action*
35 *brought in the name of the people of the State of California by the*
36 *Attorney General, a district attorney, or a city attorney.*

37 (2) *In assessing the amount of the civil penalty, the court may*
38 *consider relevant circumstances presented by the parties to the*
39 *case, including, but not limited to, the following:*

40 (A) *The nature and severity of the misconduct.*

- 1 (B) *The number of violations.*
- 2 (C) *The length of time over which the misconduct occurred, and*
- 3 *the persistence of the misconduct.*
- 4 (D) *The wilfulness of the misconduct.*
- 5 (E) *The defendant’s assets, liabilities, and net worth.*
- 6 (3) *If the Attorney General brings the action, one-half of the*
- 7 *civil penalty collected shall be paid to the treasurer of the county*
- 8 *in which the judgment was entered, and one-half to the General*
- 9 *Fund. If a district attorney brings the action, the civil penalty*
- 10 *collected shall be paid to the treasurer of the county in which the*
- 11 *judgment was entered. If a city attorney brings the action, one-half*
- 12 *of the civil penalty collected shall be paid to the treasurer of the*
- 13 *city in which the judgment was entered, and one-half to the*
- 14 *treasurer of the county in which the judgment was entered.*
- 15 (4) *The court shall grant a prevailing plaintiff reasonable*
- 16 *attorneys’ fees and costs.*

17 ~~SEC. 3.~~

18 SEC. 5. Section ~~22442.15~~ 22442.5 is added to the Business
19 and Professions Code, to read:

20 ~~22442.15.~~

21 22442.5. (a) An immigration consultant who provides
22 immigration reform act services shall establish and deposit into a
23 client trust account any funds received from a client prior to
24 performing those services for that client.

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

26 (1) “Immigration reform act” means *any pending or future act*
27 *of Congress that is enacted after the effective date of this section*
28 *but before January 1, 2017, including, but not limited to, the federal*
29 *act known as the “Border Security, Economic Opportunity, and*
30 *Immigration Modernization Act”* ~~(S. 744, 2013).~~ *(S. 744, 2013),*
31 *that authorizes an undocumented immigrant who either entered*
32 *the United States without inspection or who did not depart after*
33 *expiration of a nonimmigrant visa, to attain a lawful status under*
34 *federal law.*

35 (2) “Immigration reform act services” means ~~consultation or~~
36 ~~representation services related to immigration and citizenship~~
37 ~~status, benefits, or relief under the services described in Section~~
38 ~~22441 that are provided in connection with an immigration reform~~
39 ~~act.~~

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

4 (1) After completing one or more of the itemized services
 5 described in paragraph (1) of subdivision (b) of Section 22442,
 6 and only in the amount identified as the cost of that service or
 7 those services pursuant to paragraph (2) of subdivision (b) of
 8 Section 22442.

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

12 (d) This section shall become operative only upon the enactment
 13 of ~~the~~ *an* immigration reform act.

14 ~~SEC. 4.~~

15 ~~SEC. 6.~~ Section ~~22442.20~~ 22442.6 is added to the Business
 16 and Professions Code, to read:

17 ~~22442.20.~~

18 22442.6. (a) It is unlawful for an immigration consultant to
 19 demand or accept the advance payment of any funds from a person
 20 for immigration reform act services before the enactment of ~~the~~
 21 *an* immigration reform act, as defined in subdivision (b) of Section
 22 ~~22442.15.~~ 22442.5.

23 (b) Any funds received after ~~January 1, 2014~~ *the effective date*
 24 *of this section*, but before the enactment of ~~the~~ *an* immigration
 25 reform act, as defined in subdivision (b) of Section ~~22442.15,~~
 26 22442.5, shall be refunded to the client.

27 (c) (1) *If an immigration consultant providing immigration*
 28 *reform act services accepted funds prior to the effective date of*
 29 *this section, and the services provided in connection with payment*
 30 *of those funds were rendered, the consultant shall provide the*
 31 *client with a statement of accounting describing the services*
 32 *rendered.*

33 (2) (A) *Any funds received before the effective date of this*
 34 *section and before the enactment of an immigration reform act,*
 35 *for which immigration reform act services have not yet been*
 36 *rendered, shall either be refunded to the client or shall be deposited*
 37 *in a client trust account pursuant to Section 22442.5.*

38 (B) *If an immigration consultant deposits funds in a client trust*
 39 *account pursuant to this paragraph, he or she shall provide to the*
 40 *client a written notice, in both English and in the client's native*

1 language, that there are no benefits or relief that are available
2 and that no application for such benefits or relief may be processed
3 until enactment of an immigration reform act and the related
4 necessary federal regulations and forms.

5 (d) (1) In addition to the remedies and penalties prescribed in
6 this chapter, a person who violates this section shall be subject to
7 a civil penalty not to exceed one thousand dollars (\$1,000) per
8 day for each violation, to be assessed and collected in a civil action
9 brought by any person injured by the violation or in a civil action
10 brought in the name of the people of the State of California by the
11 Attorney General, a district attorney, or a city attorney.

12 (2) In assessing the amount of the civil penalty, the court may
13 consider relevant circumstances presented by the parties to the
14 case, including, but not limited to, the following:

15 (A) The nature and severity of the misconduct.

16 (B) The number of violations.

17 (C) The length of time over which the misconduct occurred, and
18 the persistence of the misconduct.

19 (D) The wilfulness of the misconduct.

20 (E) The defendant's assets, liabilities, and net worth.

21 (3) If the Attorney General brings the action, one-half of the
22 civil penalty collected shall be paid to the treasurer of the county
23 in which the judgment was entered, and one-half to the General
24 Fund. If a district attorney brings the action, the civil penalty
25 collected shall be paid to the treasurer of the county in which the
26 judgment was entered. If a city attorney brings the action, one-half
27 of the civil penalty collected shall be paid to the treasurer of the
28 city in which the judgment was entered, and one-half to the
29 treasurer of the county in which the judgment was entered.

30 (4) The court shall grant a prevailing plaintiff reasonable
31 attorneys' fees and costs.

32 ~~SEC. 5.~~

33 ~~SEC. 7.~~ Section 22443.1 of the Business and Professions Code
34 is amended to read:

35 22443.1. (a) (1) Prior to engaging in the business, or acting
36 in the capacity, of an immigration consultant, each person shall
37 file with the Secretary of State a bond of ~~one hundred thousand~~
38 ~~dollars (\$100,000)~~ fifty thousand dollars (\$50,000) executed by a
39 corporate surety admitted to do business in this state and
40 conditioned upon compliance with this chapter. The total aggregate

1 liability on the bond shall be limited to ~~one hundred thousand~~
2 ~~dollars (\$100,000)~~ *fifty thousand dollars (\$50,000)*.

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 people of the State of California and shall be for
8 the benefit of any person damaged by any fraud, misstatement,
9 misrepresentation, unlawful act or omission, or failure to provide
10 the services of the immigration consultant or the agents,
11 representatives, or employees of the immigration consultant, while
12 acting within the scope of that employment or agency.

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

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

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

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

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

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

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

33 (e) The Secretary of State shall post information on its Internet
34 Web site demonstrating that an immigration consultant is in
35 compliance with the bond required by this section and has
36 satisfactorily passed the background check required under Section
37 22441.1, and shall also post a copy of the immigration consultant's
38 photograph. The Secretary of State shall ensure that the information
39 is current and shall update the information at least every 30 days.
40 The Secretary of State shall only post this information and

1 photograph on its Internet Web site if the person has filed and
2 maintained the bond, filed the disclosure form and photograph
3 required to be filed with the Secretary of State, and passed the
4 background check required by Section 22441.1.

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

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

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

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

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

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

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

30 (k) *This section shall become inoperative 180 days following*
31 *the effective date of the act adding this subdivision and as of*
32 *January 1 next following that date is repealed.*

33 *SEC. 8. Section 22443.1 is added to the Business and*
34 *Professions Code, to read:*

35 *22443.1. (a) (1) Prior to engaging in the business, or acting*
36 *in the capacity, of an immigration consultant, each person shall*
37 *file with the Secretary of State a bond of one hundred thousand*
38 *dollars (\$100,000) executed by a corporate surety admitted to do*
39 *business in this state and conditioned upon compliance with this*

1 chapter. The total aggregate liability on the bond shall be limited
2 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 people of the State of California and shall be for
8 the benefit of any person damaged by any fraud, misstatement,
9 misrepresentation, unlawful act or omission, or failure to provide
10 the services of the immigration consultant or the agents,
11 representatives, or employees of the immigration consultant, while
12 acting within the scope of that employment or agency.

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

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

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

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

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

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

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

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

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

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

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

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

15 (2) A photograph of himself or herself with the dimensions and
16 in the style that would be acceptable to the United States
17 Department of State for obtaining a United States passport, as
18 instructed by the Secretary of State.

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

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

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

29 (k) This section shall become operative 180 days following the
30 effective date of the act adding this section.

31 ~~SEC. 6.~~

32 SEC. 9. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within
39 the meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 ~~SEC. 7.~~

2 *SEC. 10.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

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

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