

AMENDED IN ASSEMBLY MARCH 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 60

Introduced by Assembly Member Gonzalez

(Principal coauthor: Senator De León)

(Coauthors: Assembly Members Alejo, Baker, Chávez, Chu, Dahle, Cristina Garcia, and Weber)

December 10, 2014

An act to amend ~~Section 6240~~ Sections 6240, 6242, 22442.5, and 22442.6 of the Business and Professions Code, relating to immigration services.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, as amended, Gonzalez. Immigration ~~services; attorneys; services.~~

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law prohibits an attorney from demanding or accepting the advance payment of any funds from a person before the enactment of an immigration reform act, as defined, *that is enacted after October 5, 2013, and before January 1, 2017*, and requires any funds received during a specified time to be refunded to the client promptly, but no later than 30 days after the receipt of any funds, as provided. Existing law requires the State Bar to provide specified information relating to immigration reform act services on its Internet Web site.

This bill would revise the definition of an immigration reform act to include ~~Executive Order No. _____, issued by the President on _____, 2014, relating to immigration.~~ *any immigration reform act enacted after*

October 5, 2013, the President's executive actions on immigration announced on November 20, 2014, or any future executive action or order that authorizes an undocumented immigrant who either entered the United States without inspection or who did not depart after the expiration of a nonimmigrant visa, to attain a lawful status under federal law. This bill would require the State Bar to announce and post on its Internet Web site when an executive action or order described above has been enacted. This bill would provide that it is unlawful to demand or accept the advance payment of any funds for immigration reform act services in connection with requests for expanded Deferred Action for Childhood Arrivals, requests for Deferred Action for Parents of Americans and Lawful Permanent Residents, expanded Provisional Waivers of Unlawful Presence, or other future relief, as provided, under federal law.

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 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. Existing law prohibits an immigration consultant from demanding or accepting the advance payment of any funds from a person before the enactment of an immigration reform act, as defined, that is enacted after October 5, 2013, and before January 1, 2017, and requires any funds received during a specified time to be refunded to the client promptly, but no later than 30 days after the receipt of any funds, as provided. Existing law prescribes civil penalties, not to exceed \$1,000 per day for each violation, for immigration consultants who violate these provisions.

This bill would revise the definition of an immigration reform act to include any immigration reform act enacted after October 5, 2013, the President's executive actions on immigration announced on November 20, 2014, or any future executive action or order that authorizes an undocumented immigrant who either entered the United States without inspection or who did not depart after the expiration of a nonimmigrant visa, to attain a lawful status under federal law. This bill would require the State Bar to announce and post on its Internet Web site when an executive action or order described above has been enacted. This bill would provide that it is unlawful to demand or accept the advance payment of any funds for immigration reform act services in connection

with requests for expanded Deferred Action for Childhood Arrivals, requests for Deferred Action for Parents of Americans and Lawful Permanent Residents, expanded Provisional Waivers of Unlawful Presence, or other future relief, as provided, under federal law.

Because a violation of these provisions by an immigration consultant would be a crime, this bill 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 6240 of the Business and Professions
2 Code is amended to read:

3 6240. For purposes of this article, the following definitions
4 apply:

5 (a) “Immigration reform act” means either of the following:

6 (1) Any pending or future act of Congress that is enacted after
7 October 5, 2013, ~~but before January 1, 2017, including, but not~~
8 ~~limited to, the federal act known as the “Border Security, Economic~~
9 ~~Opportunity, and Immigration Modernization Act” (S. 744, 2013),~~
10 that authorizes an undocumented immigrant who either entered
11 the United States without inspection or who did not depart after
12 the expiration of a nonimmigrant visa, to attain a lawful status
13 under federal law. The State Bar shall announce and post on its
14 Internet Web site when an immigration reform act has been
15 enacted.

16 ~~(2) Executive Order No. _____, issued by the President on _____,~~
17 ~~2014, relating to immigration.~~

18 (2) *The President’s executive actions on immigration announced*
19 *on November 20, 2014, or any future executive action or order*
20 *that authorizes an undocumented immigrant who either entered*
21 *the United States without inspection or who did not depart after*
22 *the expiration of a nonimmigrant visa to attain a lawful status*

1 *under federal law. The State Bar shall announce and post on its*
2 *Internet Web site when an executive action or order has been*
3 *issued.*

4 (b) “Immigration reform act services” means services offered
5 in connection with an immigration reform act that are necessary
6 in the preparation of an application and other related initial
7 processes in order for an undocumented immigrant, who either
8 entered the United States without inspection or who did not depart
9 after the expiration of a nonimmigrant visa, to attain a lawful status
10 under an immigration reform act.

11 *SEC. 2. Section 6242 of the Business and Professions Code is*
12 *amended to read:*

13 6242. (a) It is unlawful for an attorney to demand or accept
14 the advance payment of any funds from a person for immigration
15 reform act services ~~before the enactment of an immigration reform~~
16 ~~act.~~ *in connection with any of the following:*

17 (1) *An immigration reform act as defined in paragraph (1) of*
18 *subdivision (a) of Section 6240, before the enactment of that act.*

19 (2) (A) *Requests for expanded Deferred Action for Childhood*
20 *Arrivals (DACA) under an immigration reform act as defined in*
21 *paragraph (2) of subdivision (a) of Section 6240, before the date*
22 *the United States Citizenship and Immigration Services begins*
23 *accepting those requests.*

24 (B) *Requests for Deferred Action for Parents of Americans and*
25 *Lawful Permanent Residents (DAPA) under an immigration reform*
26 *act as defined in paragraph (2) of subdivision (a) of Section 6240,*
27 *before the date the United States Citizenship and Immigration*
28 *Services begins accepting those requests.*

29 (C) *Expanded Provisional Waivers of Unlawful Presence under*
30 *an immigration reform act as defined in paragraph (2) of*
31 *subdivision (a) of Section 6240, before the issuance and effective*
32 *date of new guidelines and regulations for those provisional*
33 *waivers.*

34 (D) *Any relief offered under any executive action announced*
35 *or executive order issued, on or after the effective date of the act*
36 *adding this subparagraph, that authorizes an undocumented*
37 *immigrant who either entered the United States without inspection*
38 *or who did not depart after the expiration of a nonimmigrant visa*
39 *to attain a lawful status under federal law, before the executive*
40 *action or order has been implemented and the relief is available.*

1 (b) Any funds received after ~~the effective date of this section,~~
2 *October 5, 2013*, but before the enactment of an immigration
3 reform act, shall be refunded to the client promptly, but no later
4 than 30 days after the receipt of the funds.

5 (c) (1) If an attorney providing immigration reform act services
6 accepted funds for immigration reform act services prior to ~~the~~
7 ~~effective date of this section,~~ *October 5, 2013*, and the services to
8 be performed in connection with payment of those funds were
9 rendered, the attorney shall promptly, but no later than 30 days
10 after ~~the effective date of this section,~~ *October 5, 2013*, provide
11 the client with a statement of accounting describing the services
12 rendered.

13 (2) (A) Any funds received before ~~the effective date of this~~
14 ~~section~~ *October 5, 2013*, for which immigration reform act services
15 were not rendered prior to ~~the effective date of this section,~~ *October*
16 *5, 2013*, shall be either refunded to the client or deposited in a
17 client trust account.

18 (B) If an attorney deposits funds in a client trust account
19 pursuant to this paragraph, he or she shall provide a written notice,
20 in both English and the client's native language, informing the
21 client of the following:

22 (i) That there are no benefits or relief available, and that no
23 application for such benefits or relief may be processed, until
24 enactment of an immigration reform act and the related necessary
25 federal regulations or forms, and that, commencing with ~~the~~
26 ~~effective date of this section,~~ *October 5, 2013*, it is unlawful for
27 an attorney to demand or accept the advance payment of any funds
28 from a person for immigration reform act services before the
29 enactment of an immigration reform act.

30 (ii) That he or she may report complaints to the Executive Office
31 for Immigration Review of the United States Department of Justice,
32 to the State Bar of California, or to the bar of the court of any state,
33 possession, territory, or commonwealth of the United States or of
34 the District of Columbia where the attorney is admitted to practice
35 law. The notice shall include the toll-free telephone numbers and
36 Internet Web sites of those entities.

37 *SEC. 3. Section 22442.5 of the Business and Professions Code*
38 *is amended to read:*

39 22442.5. (a) An immigration consultant who provides
40 immigration reform act services shall establish and deposit into a

1 client trust account any funds received from a client prior to
2 performing those services for that client.

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

4 (1) “Immigration reform act” means ~~any pending or future act~~
5 ~~of Congress that is enacted after the effective date of this section~~
6 ~~but before January 1, 2017, including, but not limited to, the federal~~
7 ~~act known as the “Border Security, Economic Opportunity, and~~
8 ~~Immigration Modernization Act” (S. 744, 2013), that authorizes~~
9 ~~an undocumented immigrant who either entered the United States~~
10 ~~without inspection or who did not depart after expiration of a~~
11 ~~nonimmigrant visa, to attain a lawful status under federal law. The~~
12 ~~State Bar shall announce and post on its Internet Web site when~~
13 ~~an immigration reform act has been enacted. either of the following:~~

14 (A) *Any pending or future act of Congress that is enacted after*
15 *October 5, 2013, that authorizes an undocumented immigrant who*
16 *either entered the United States without inspection or who did not*
17 *depart after the expiration of a nonimmigrant visa, to attain a*
18 *lawful status under federal law. The State Bar shall announce and*
19 *post on its Internet Web site when an immigration reform act has*
20 *been enacted.*

21 (B) *The President’s executive actions on immigration announced*
22 *on November 20, 2014, or any future executive action or order*
23 *that authorizes an undocumented immigrant who either entered*
24 *the United States without inspection or who did not depart after*
25 *the expiration of a nonimmigrant visa to attain a lawful status*
26 *under federal law. The State Bar shall announce and post on its*
27 *Internet Web site when an executive action or order has been*
28 *issued.*

29 (2) “Immigration reform act services” means services described
30 in Section 22441 that are provided in connection with an
31 immigration reform act.

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

35 (1) After completing one or more of the itemized services
36 described in paragraph (1) of subdivision (b) of Section 22442,
37 and only in the amount identified as the cost of that service or
38 those services pursuant to paragraph (2) of subdivision (b) of
39 Section 22442.

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

4 *SEC. 4. Section 22442.6 of the Business and Professions Code*
5 *is amended to read:*

6 22442.6. (a) It is unlawful for an immigration consultant to
7 demand or accept the advance payment of any funds from a person
8 for immigration reform act services ~~before the enactment of an~~
9 ~~immigration reform act, as defined in subdivision (b) of Section~~
10 ~~22442.5, in connection with any of the following:~~

11 (1) *An immigration reform act as defined in subparagraph (A)*
12 *of paragraph (1) of subdivision (b) of Section 22442.5, before the*
13 *enactment of that act.*

14 (2) (A) *Requests for expanded Deferred Action for Childhood*
15 *Arrivals (DACA) under an immigration reform act as defined in*
16 *subparagraph (B) of paragraph (1) of subdivision (b) of Section*
17 *22442.5, before the date the United States Citizenship and*
18 *Immigration Services begins accepting those requests.*

19 (B) *Requests for Deferred Action for Parents of Americans and*
20 *Lawful Permanent Residents (DAPA) under an immigration reform*
21 *act as defined in subparagraph (B) of paragraph (1) of subdivision*
22 *(b) of Section 22442.5, before the date the United States Citizenship*
23 *and Immigration Services begins accepting those requests.*

24 (C) *Expanded Provisional Waivers of Unlawful Presence under*
25 *an immigration reform act as defined in subparagraph (B) of*
26 *paragraph (1) of subdivision (b) of Section 22442.5, before the*
27 *issuance and effective date of new guidelines and regulations for*
28 *those provisional waivers.*

29 (D) *Any relief offered under any executive action announced*
30 *or executive order issued, on or after the effective date of the act*
31 *adding this subparagraph, that authorizes an undocumented*
32 *immigrant who either entered the United States without inspection*
33 *or who did not depart after the expiration of a nonimmigrant visa*
34 *to attain a lawful status under federal law, before the executive*
35 *action or order has been implemented and the relief is available.*

36 (b) ~~Any funds received after the effective date of this section,~~
37 *October 5, 2013, but before the enactment of an immigration*
38 *reform act, as defined in subdivision (b) of Section 22442.5, shall*
39 *be refunded to the client promptly, but no later than 30 days after*
40 *receipt of any funds.*

1 (c) (1) If an immigration consultant providing immigration
2 reform act services accepted funds prior to ~~the effective date of~~
3 ~~this section, October 5, 2013,~~ and the services provided in
4 connection with payment of those funds were rendered, the
5 consultant shall promptly, but no later than 30 days after ~~the~~
6 ~~effective date of this section, October 5, 2013,~~ provide the client
7 with a statement of accounting describing the services rendered.

8 (2) (A) Any funds received before ~~the effective date of this~~
9 ~~section, October 5, 2013,~~ for which immigration reform act services
10 were not rendered prior to ~~the effective date of this section, October~~
11 ~~5, 2013,~~ shall either be refunded to the client or shall be deposited
12 in a client trust account pursuant to Section 22442.5.

13 (B) If an immigration consultant deposits funds in a client trust
14 account pursuant to this paragraph, he or she shall comply with
15 all applicable provisions of this chapter, including Section 22442,
16 and shall provide to the client a written notice, in both English and
17 in the client's native language, that there are no benefits or relief
18 available, that no application for such benefits or relief may be
19 processed until enactment of an immigration reform act and the
20 related necessary federal regulations and forms, and that
21 commencing with ~~the effective date of this section, October 5,~~
22 ~~2013,~~ it is unlawful for an immigration consultant to demand or
23 accept the advance payment of any funds from a person for
24 immigration reform act services before the enactment of an
25 immigration reform act.

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

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

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

37 (B) The number of violations.

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

40 (D) The willfulness of the misconduct.

1 (E) The defendant’s assets, liabilities, and net worth.

2 (3) If the Attorney General brings the action, one-half of the
3 civil penalty collected shall be paid to the treasurer of the county
4 in which the judgment was entered, and one-half to the General
5 Fund. If a district attorney brings the action, the civil penalty
6 collected shall be paid to the treasurer of the county in which the
7 judgment was entered. If a city attorney brings the action, one-half
8 of the civil penalty collected shall be paid to the treasurer of the
9 city in which the judgment was entered, and one-half to the
10 treasurer of the county in which the judgment was entered.

11 (4) The court shall grant a prevailing plaintiff reasonable
12 attorneys’ fees and costs.

13 *SEC. 5. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*