

AMENDED IN ASSEMBLY MARCH 19, 2015

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, *Chiu*, Chu,
Dahle, Cristina Garcia, and Weber)

December 10, 2014

An act to amend Sections 6240, 6242, 22442.5, and 22442.6 of the Business and Professions Code, relating to immigration services, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 60, 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. 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 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~~ *issued*. 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~~ *issued*. 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.

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

Vote: ~~majority~~^{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 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, that authorizes an undocumented immigrant who
8 either entered the United States without inspection or who did not
9 depart after the expiration of a nonimmigrant visa, to attain a lawful
10 status under federal law. The State Bar shall announce and post
11 on its Internet Web site when an immigration reform act has been
12 enacted.

13 (2) The President’s executive actions on immigration announced
14 on November 20, 2014, or any future executive action or order
15 that authorizes an undocumented immigrant who either entered
16 the United States without inspection or who did not depart after
17 the expiration of a nonimmigrant visa to attain a lawful status under
18 federal law. The State Bar shall announce and post on its Internet
19 Web site when an executive action or order has been issued.

20 (b) (1) “Immigration reform act services” means services
21 offered in connection with an immigration reform act that are
22 necessary in the preparation of an application and other related
23 initial processes in order for an undocumented immigrant, who

1 either entered the United States without inspection or who did not
2 depart after the expiration of a nonimmigrant visa, to attain a lawful
3 status under an immigration reform act.

4 (2) *Immigration reform act services do not include legal services*
5 *that have an independent value apart from the preparation of an*
6 *immigration reform act and other related initial processes, such*
7 *as assisting a client in preventing removal from the United States.*

8 SEC. 2. Section 6242 of the Business and Professions Code is
9 amended to read:

10 6242. (a) It is unlawful for an attorney to demand or accept
11 the advance payment of any funds from a person for immigration
12 reform act services in connection with any of the following:

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

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

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

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

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

37 ~~(b) Any funds received after October 5, 2013, but before the~~
38 ~~enactment of an immigration reform act, shall be refunded to the~~
39 ~~client promptly, but no later than 30 days after the receipt of the~~
40 ~~funds.~~

1 (b) Any advance payment of funds for immigration reform act
2 services that was received after October 5, 2013, but before the
3 enactment or implementation of the immigration reform act for
4 which the services were sought, shall be refunded to the client
5 promptly, but no later than 30 days after the receipt of the funds.

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

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

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

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

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

39 SEC. 3. Section 22442.5 of the Business and Professions Code
40 is amended to read:

1 22442.5. (a) An immigration consultant who provides
2 immigration reform act services shall establish and deposit into a
3 client trust account any funds received from a client prior to
4 performing those services for that client.

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

6 (1) “Immigration reform act” means either of the following:

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

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

21 (2) “Immigration reform act services” means services described
22 in Section 22441 that are provided in connection with an
23 immigration reform act.

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

27 (1) After completing one or more of the itemized services
28 described in paragraph (1) of subdivision (b) of Section 22442,
29 and only in the amount identified as the cost of that service or
30 those services pursuant to paragraph (2) of subdivision (b) of
31 Section 22442.

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

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

37 22442.6. (a) It is unlawful for an immigration consultant to
38 demand or accept the advance payment of any funds from a person
39 for immigration reform act services in connection with any of the
40 following:

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

4 (2) (A) Requests for expanded Deferred Action for Childhood
5 Arrivals (DACA) under an immigration reform act as defined in
6 subparagraph (B) of paragraph (1) of subdivision (b) of Section
7 22442.5, before the date the United States Citizenship and
8 Immigration Services begins accepting those requests.

9 (B) Requests for Deferred Action for Parents of Americans and
10 Lawful Permanent Residents (DAPA) under an immigration reform
11 act as defined in subparagraph (B) of paragraph (1) of subdivision
12 (b) of Section 22442.5, before the date the United States
13 Citizenship and Immigration Services begins accepting those
14 requests.

15 (C) Expanded Provisional Waivers of Unlawful Presence under
16 an immigration reform act as defined in subparagraph (B) of
17 paragraph (1) of subdivision (b) of Section 22442.5, before the
18 issuance and effective date of new guidelines and regulations for
19 those provisional waivers.

20 (D) Any relief offered under any executive action announced
21 or executive order issued, on or after the effective date of the act
22 adding this subparagraph, that authorizes an undocumented
23 immigrant who either entered the United States without inspection
24 or who did not depart after the expiration of a nonimmigrant visa
25 to attain a lawful status under federal law, before the executive
26 action or order has been implemented and the relief is available.

27 ~~(b) Any funds received after October 5, 2013, but before the~~
28 ~~enactment of an immigration reform act, as defined in subdivision~~
29 ~~(b) of Section 22442.5, shall be refunded to the client promptly,~~
30 ~~but no later than 30 days after receipt of any funds.~~

31 *(b) Any advance payment of funds for immigration reform act*
32 *services that was received after October 5, 2013, but before the*
33 *enactment or implementation of the immigration reform act for*
34 *which the services were sought, shall be refunded to the client*
35 *promptly, but no later than 30 days after the receipt of the funds.*

36 (c) (1) If an immigration consultant providing immigration
37 reform act services accepted funds prior to ~~October 5, 2013,~~ *the*
38 *effective date of this amendment to this section,* and the services
39 provided in connection with payment of those funds were rendered,
40 the consultant shall promptly, but no later than 30 days after

1 ~~October 5, 2013, the effective date of this amendment to this~~
2 ~~section, provide the client with a statement of accounting describing~~
3 ~~the services rendered.~~

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

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

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

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

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

34 (B) The number of violations.

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

37 (D) The willfulness of the misconduct.

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

39 (3) If the Attorney General brings the action, one-half of the
40 civil penalty collected shall be paid to the treasurer of the county

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

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

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

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

23 *In order to implement measures as quickly as possible and as*
 24 *necessary to prevent fraud on immigrants by attorneys and other*
 25 *persons by making promises of benefits and relief under pending*
 26 *and proposed federal immigration reform acts before their*
 27 *enactment or before their relief and remedies become available,*
 28 *it is necessary that this act take effect immediately.*