

AMENDED IN ASSEMBLY MARCH 26, 2015

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, Gipson, 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 issued. This bill would provide that it is unlawful *for an attorney* 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 issued. This bill would provide that it is unlawful *for an immigration consultant* 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: $\frac{2}{3}$. 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 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

1 ~~necessary in the preparation of~~ *for the purpose of preparing* an
2 application and other related initial processes in order for an
3 undocumented immigrant, who either entered the United States
4 without inspection or who did not depart after the expiration of a
5 nonimmigrant visa, to attain a lawful status under an immigration
6 reform act.

7 (2) Immigration reform act services do not include legal services
8 that have an independent value apart from the preparation of *an*
9 *application pursuant to* an immigration reform act and other related
10 initial processes, such as assisting a client in preventing removal
11 from the United States *and achieving postconviction relief from*
12 *prior criminal convictions*.

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

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

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

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

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

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

35 (D) Any relief offered under any executive action announced
36 or executive order issued, on or after the effective date of the act
37 adding this subparagraph, that authorizes an undocumented
38 immigrant who either entered the United States without inspection
39 or who did not depart after the expiration of a nonimmigrant visa

1 to attain a lawful status under federal law, before the executive
2 action or order has been implemented and the relief is available.

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

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

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

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

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

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

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

3 22442.5. (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 either of the following:

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

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

23 (2) "Immigration reform act services" means services described
24 in Section 22441 that are provided in connection with an
25 immigration reform act.

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

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

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

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

39 22442.6. (a) It is unlawful for an immigration consultant to
40 demand or accept the advance payment of any funds from a person

1 for immigration reform act services in connection with any of the
2 following:

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

6 (2) (A) Requests for expanded Deferred Action for Childhood
7 Arrivals (DACA) under an immigration reform act as defined in
8 subparagraph (B) of paragraph (1) of subdivision (b) of Section
9 22442.5, before the date the United States Citizenship and
10 Immigration Services begins accepting those requests.

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

17 (C) *Requests for Expanded Provisional Waivers of Unlawful*
18 *Presence* under an immigration reform act as defined in
19 subparagraph (B) of paragraph (1) of subdivision (b) of Section
20 22442.5, before the issuance and effective date of new guidelines
21 and regulations for those provisional waivers.

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

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

34 (c) (1) If an immigration consultant providing immigration
35 reform act services accepted funds prior to the effective date of
36 this amendment to this section, and the services provided in
37 connection with payment of those funds were rendered, the
38 consultant shall promptly, but no later than 30 days after the
39 effective date of this amendment to this section, provide the client
40 with a statement of accounting describing the services rendered.

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

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

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

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

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

31 (B) The number of violations.

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

34 (D) The willfulness of the misconduct.

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

36 (3) If the Attorney General brings the action, one-half of the
37 civil penalty collected shall be paid to the treasurer of the county
38 in which the judgment was entered, and one-half to the General
39 Fund. If a district attorney brings the action, the civil penalty
40 collected shall be paid to the treasurer of the county in which the

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

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

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

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

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

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