

Assembly Bill No. 60

Passed the Assembly June 2, 2015

Chief Clerk of the Assembly

Passed the Senate May 28, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an approved period, to attain a lawful status under federal law or to otherwise remain in the country. 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, or other future relief, as provided, under federal law. This bill would also

provide that an advance payment of funds for immigration reform act services may be placed into a client trust account, as specified.

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.

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

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

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

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

(1) Any pending or future act of Congress that is enacted after October 5, 2013, that authorizes an undocumented immigrant who entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an authorized period, to attain a lawful status under federal law or to otherwise remain in the country. The State Bar shall announce and post on its Internet Web site when an immigration reform act has been enacted.

(2) 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 entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an approved period pursuant to a visa, to attain a lawful status under federal law or to otherwise remain in the country. The State Bar shall announce and post on its Internet Web site when an executive action or order has been issued.

(b) (1) “Immigration reform act services” means services offered in connection with an immigration reform act that are exclusively for the purpose of preparing an application and other related initial processes in order for an undocumented immigrant, who entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an approved period pursuant to a visa, to attain a lawful status under federal law or to otherwise remain in the country.

(2) Immigration reform act services do not include services that have an independent value apart from the preparation of an application pursuant to an immigration reform act and other related initial processes, including, but not limited to, assisting a client in preventing removal from the United States, preventing any other adverse action related to the ability to remain in the United States, including pending legal action, and achieving postconviction relief from prior criminal convictions.

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

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

(1) An immigration reform act as defined in paragraph (1) of subdivision (a) of Section 6240, before the enactment of that act, when the relevant form or application is released or announced and is not subject to any pending legal action, or when the acceptance date of the relevant form or application has been announced, whichever is sooner.

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

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

(C) Any relief offered under any executive action announced or executive order issued, on or after the effective date of the act adding this subparagraph, 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, before the executive action or order has been implemented and the relief is available.

(b) Any advance payment of funds for immigration reform act services that was received after October 5, 2013, but before the enactment or implementation of the immigration reform act for which the services were sought, shall be refunded to the client

promptly, but no later than 30 days after the receipt of the funds or placed into a client trust account, which must be returned or utilized under the provisions of the act amending this subdivision no later than January 20, 2017.

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

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

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

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

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

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

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

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

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

(A) Any pending or future act of Congress that is enacted after October 5, 2013, 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. The State Bar shall announce and post on its Internet Web site when an immigration reform act has been enacted.

(B) 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. The State Bar shall announce and post on its Internet Web site when an executive action or order has been issued.

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

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

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

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

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

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

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

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

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

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

(D) Any relief offered under any executive action announced or executive order issued, on or after the effective date of the act adding this subparagraph, 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, before the executive action or order has been implemented and the relief is available.

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

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

(2) (A) Any funds received before the effective date of this amendment to this section for which immigration reform act

services were not rendered prior to the effective date of this amendment to this section shall either be refunded to the client or shall be deposited in a client trust account pursuant to Section 22442.5.

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

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

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

(A) The nature and severity of the misconduct.

(B) The number of violations.

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

(D) The willfulness of the misconduct.

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

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

city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

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

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

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

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

Approved _____, 2015

Governor