

## Assembly Bill No. 1079

### CHAPTER 336

An act to amend Sections 22443.1 and 22445 of, and to add Section 22442.4 to, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1079, Robert Pacheco. Immigration consultants.

(1) Under provisions of law repealed effective January 1, 1998, an immigration consultant was required to notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.

This bill would reinstate this requirement.

(2) Existing law requires anyone engaging in the business or acting in the capacity of an immigration consultant to post a bond with the Secretary of State of \$25,000. Existing law repeals this provision on January 1, 2000, unless a statute is enacted that deletes or extends that date.

This bill would delete the January 1, 2000 repeal date, and would increase the bond requirement to \$50,000.

(3) Existing law provides for a civil penalty to be imposed on anyone violating the provisions regulating immigration consultants, and for a criminal penalty for violating any of these provisions with exceptions for certain required disclosures or prohibited translations.

This bill would eliminate these exceptions to criminal sanction, thereby creating new crimes and imposing a state-mandated local program.

(4) 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.

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

SECTION 1. Section 22442.4 is added to the Business and Professions Code, to read:

22442.4. An immigration consultant shall notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.



SEC. 2. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, each person shall file with the Secretary of State a bond of fifty thousand dollars (\$50,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars (\$50,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond or the deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(e) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(f) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(g) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(h) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which



subdivision (g) shall apply with respect to any amount remaining in the deposit.

(i) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had claims paid in full or in part pursuant to subdivision (g) or (h) shall not be required to return funds received from the deposit for the benefit of other claimants.

(j) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the assignor of the deposit by the Secretary of State.

(k) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an immigration consultant or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business or act in the capacity of an immigration consultant or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(l) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (k) to resolve outstanding claims against the deposit.

(m) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

SEC. 3. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) A person who violates this chapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each



violation, to be assessed and collected in a civil action brought by any person injured by the violation.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

SEC. 4. 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.

