

## Assembly Bill No. 1999

### CHAPTER 705

An act to amend Sections 22445, 22446.5, and 22447 of the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1999, Correa. Immigration consultants.

Existing law, the Immigration Consultants Act, authorizes a person claiming to be aggrieved by an immigration consultant to bring a civil action for injunctive relief or damages, or both. An injured party may also seek civil penalties against an immigration consultant in an amount not to exceed \$100,000. Existing law also allows any other party to bring a civil action on behalf of the general public against an immigration consultant for injunctive relief.

This bill would authorize the Attorney General, district attorney, or city attorney to seek civil penalties not exceeding \$100,000 against immigration consultants for a violation of the act. The bill would expand the types of civil remedies available to include restitution and other equitable relief and would require that an action for civil penalties brought by the Attorney General, a district attorney, or a city attorney seek these remedies. The bill would provide that an action being brought on behalf of the people would not preclude an action being brought by an injured person.

Existing law requires that a court impose a civil penalty for a violation of the Immigration Consultants Act, and that the court, in imposing the penalty, consider certain relevant circumstances presented by the parties to the case.

This bill would instead authorize the court to consider the relevant circumstances in assessing the civil penalty.

Existing law prohibits a person from representing himself or herself as an immigration consultant unless the person has a bond on file with the Secretary of State. Existing law permits a person awarded damages in a civil action to recover the damages from that bond.

This bill would provide that in an action brought by the Attorney General, a district attorney, or a city attorney the court may order relief for the benefit of the injured parties to be paid from the bond.

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

SECTION 1. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) 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. An action brought in the name of the people of the State of California shall not preclude an action being brought by an injured person.

(2) The court shall impose a civil penalty for each violation of this chapter. 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: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(3) Any action brought pursuant to this section by the Attorney General, a district attorney, or a city attorney shall also seek relief under subdivision (c) of Section 22446.5.

(4) 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.

(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. 2. Section 22446.5 of the Business and Professions Code is amended to read:

22446.5. (a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars (\$1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) The Attorney General, a district attorney, or a city attorney who claims a violation of this chapter has been committed by an immigration consultant, may bring a civil action for injunctive relief, restitution, and other equitable relief against the immigration consultant in the name of the people of the State of California.

(d) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law.

SEC. 3. Section 22447 of the Business and Professions Code is amended to read:

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond required by Section 22443.1. In an action brought by the Attorney General, a district attorney, or a city attorney, the court may order relief for benefit of the injured parties to be paid from the bond.

(b) When any claim or claims against a bond have been paid so as to reduce the principal amount of the bond remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and



until the bond has been reinstated up to the minimum amount required by Section 22443.1.

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